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CONSTITUTIONAL CONVENTION COMMISSION.

COMMISSION MEETING

University of Maryland School of Law
Baltimore, Maryland

December 3, 1966

COMMISSION MEETING

University of Maryland School of Law
Baltimore, Maryland

December 19, 1966

VOLUME XI

CONSTITUTIONAL CONVENTION COMMISSION

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JOHN R. HARGROVE	FURMAN L. TEMPLETON

WILLIAM C. WALSH

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JOHN C. BROOKS
Executive Director

KALMAN R. HETTLEMAN
Assistant to the Executive Director

* * * * *

William Prescott Allen (*Resigned January 5, 1966*)
Ernest N. Cory, Jr. (*Resigned May 13, 1966*)
Walter R. Haile (*Resigned December 20, 1966*)
William J. McWilliams (*Resigned September 10, 1965*)
Ridgely P. Melvin, Jr. (*Resigned August 2, 1966*)
George L. Russell, Jr. (*Resigned July 12, 1966*)

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700 Mercantile Trust Building
Baltimore, Maryland 21202

CONSTITUTIONAL CONVENTION COMMISSION

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AND DECLARATION OF RIGHTS

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Leah S. Freedlander
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(appointed on July 12, 1966)
Stanford Hoff
John W. Mitchell
(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

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(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until
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Edward T. Miller
Charles Mindel
Alfred L. Scanlan
John H. Michener, Reporter
(appointed on September 12, 1966)

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William C. Walsh
(served until June 6, 1966)
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(served as Reporter until
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(served until May 13, 1966)

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(appointed on July 12, 1966)
Clarence W. Miles
Melvin J. Sykes
(appointed on July 12, 1966)
Lawrence F. Rodowsky, Reporter

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(served until June 6, 1966)
William J. McWilliams
(served as Chairman until
September 10, 1965)
Ridgely P. Melvin, Jr.
(served as Chairman from
September 10, 1965 to
August 2, 1966)
George L. Russell, Jr.
(served until July 12, 1966)
E. Phillip Sayre
(served until June 6, 1966)
L. Mercer Smith
(served until June 6, 1966)
William C. Walsh
(served until June 6, 1966)

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Harry Bard
(served until June 6, 1966)
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(served until June 6, 1966)

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(appointed Chairman on
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Franklin L. Burdette
Leah S. Freedlander
Clarence W. Miles
(served as Chairman until
December 2, 1965)
L. Mercer Smith
John B. Howard, Reporter
(appointed on May 12, 1966)

* * * *

E. Dale Adkins, Jr.
(served until June 6, 1966)
William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
(served from July 12, 1966 to
December 20, 1966)
William J. McWilliams
(served until September 10, 1965)
Ridgely P. Melvin, Jr.
(served until August 2, 1966)
Furman L. Templeton
(served until June 6, 1966)
John Martin Jones, Jr.
(served as Reporter until
February 23, 1966)

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PROVISIONS

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James O'C. Gentry
Furman L. Templeton
Lewis A. Noonberg, Reporter
(appointed February 26, 1966)

* * * *

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(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
(served from July 12, 1966
to December 20, 1966)
Edward T. Miller
(served until June 6, 1966)
Frank A. DeCosta, Jr.
(served as Reporter until
February 22, 1966)

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Richard W. Case
Martin D. Jenkins
Margaret Kostritsky, Reporter

* * * *

Calhoun Bond
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Hal C. B. Clagett
(served until June 6, 1966)

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Hal C. B. Clagett
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Robert J. Martineau
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John W. Mitchell
(appointed on November 9, 1966)
E. Phillip Sayre
Eugene Pitrof, Reporter

* * * *

Franklin L. Burdette
(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

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Commission held on Saturday, December 3, 1966, at 10 o'clock a.m., at Room C-311, University of Maryland, School of Law, Baltimore, Maryland.

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Richard W. Case, Esquire, Member
Hal C. B. Clagett, Esquire, Member
James O'Connor Gentry, Esquire, Member
Walter R. Haile, Esquire, Member
John B. Howard, Esquire, Member
Dr. Martin D. Jenkins, Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
John R. Hargrove, Esquire, Member
Dr. Furman I. Templeton, Member

Reported by:
A. A. Castiglione and
C. J. Hunt and M. Wasserman

1 ALSO PRESENT:

2 John C. Brooks, Esquire, Executive Director
3 Dr. Clinton Ivan Winslow, Consultant
4 Dr. John H. Michener, Research Assistant
5 Kalman R. Hettleman, Staff Member
6 William Noonberg, Reporter

7 -----

8 THE CHAIRMAN: May we come to order, please.

9 The first item on the agenda, the report of the secretary.

10 MR. MARTINEAU: I don't have any additional
11 minutes.

12 THE CHAIRMAN: The minutes for the last
13 three meetings, I think it is, maybe four, have not
14 been prepared or circulated because we have been just
15 too jammed to be able to go through the transcripts and
16 tabulate the votes and so forth, in order to send you
17 the minutes. We hope they will be circulated to you
18 within the next ten days.

19 The report of the Executive Director.

20 John?

21 MR. BROOKS: Only to say that by going over
and reviewing the assignments each committee has, I think
most committees have just about completed their assignments.

1 There are just one or two items outstanding with about
2 half the committees and the other half seem to have
3 completed. Reviewing the assignment, there is one
4 thing we very much need from the committees at this point
5 is a completed, up-dated final report with the commen-
6 tary you would propose being included in the final
7 report of the Commission itself and we would like to get
8 that in the next week, if we can, from each committee.

9 MR. MARTINEAU: I'd like to ask a question.
10 Is this, what you want, something like we had in our
11 Fifth Report, only brought up to date?

12 MR. BROOKS: That's right, written from
13 the point of view of the Commission, rather than the
14 committee itself.

15 MR. MARTINEAU: You want a proposed draft
16 of the Commission report?

17 MR. BROOKS: That's right. Thank you.

18 THE CHAIRMAN: I have just a very few
19 things to report to you, matters of information, some of
20 which will have some bearing on the discussions this
21 morning.

1 Since the last meeting, John Brooks and I
2 have had conversations again with the Governor and
3 some of his assistants discussing primarily the budgetary
4 matters and trying to get his views on the question of
5 election of delegates. I might add, as to that latter,
6 that he is more and more concerned about it because he
7 is receiving more and more comment indicating the people
8 who are going to run for the position of delegate to the
9 Convention. Some obviously qualify and some, at
10 least in his opinion, obviously not. I will discuss
11 that in more detail when we discuss the report of the
12 Commission.

13 He has, however, with reference to the
14 budget, insofar as he can do so, approved in principle
15 the broad recommendations which we were making as to
16 creating a staff and assistants to get the Convention
17 started off right, including the idea -- provided the
18 Legislature approves, and he thinks it will -- of some
19 sort of orientation session of a day or two with the
20 newly elected delegates. He has indicated that he will
21 pass these views along to Governor-Elect Agnew, but in

1 the meantime, he has instructed the Budget Department to
2 keep in mind lump sum appropriations to carry out these
3 purposes.

4 We have also met with Mr. Slicher and
5 discussed in more detail with him these problems and at
6 the moment he is contemplating providing, subject, of
7 course, to the approval of Mr. Agnew, \$750,000, in round
8 figures, as a deficiency in the current fiscal year to
9 provide for the expense of the election next spring. This
10 figure is only an estimate obtained from the Attorney
11 General's office and we have got to get a little more
12 accurate estimate, but the thought here is to carry out
13 the Commission's recommendation that the expense of
14 the election be borne by the state and not by the political
15 subdivisions.

16 With reference to the budget appropriation
17 for the next fiscal year, which would cover the Conven-
18 tion and some sort of advertising or educational program
19 after the conclusion of the Convention to educate the
20 public as to what is in the proposed new Constitution,
21 we have upped the previous estimates based primarily on

1 Mr. Slicher's suggestions as to the cost of publication
2 that will probably be required of the draft of the
3 Constitution and related explanatory matter.

4 So that, at the moment, he's thinking in
5 terms of \$1,200,000, not including the cost of the
6 special election to come along in '68. So that, at the
7 moment, and again all subject to the approval of the
8 incoming Governor, the appropriations contemplated would
9 be \$750,000, in the current year, and \$1,200,000, plus
10 \$750,000 in the next fiscal year.

11 We have also scheduled a meeting with Mr. Agnew
12 this week, Tuesday, to discuss the same matters with
13 him and also hopefully at that time to outline to him in
14 a fair amount of detail what the general recommendations
15 of the Commission are going to be and at that time I
16 would hope that we could be able to get from him a
17 clear indication of just what his views are going to
18 be with reference to the Convention, election, and so
19 forth.

20 We had hoped by this time to have had
21 conferences with some of the legislative leaders, so that

1 we could report to you on it, but this has been impossible
2 to arrange. We do have a conference scheduled next
3 week with Senator James and Mr. Marvin Mandel and, in
4 the offing, but not yet scheduled as to date, conferences
5 with Senator Harry Hughes and Ed Hall and with Glenn
6 Beall and Dale Hess in the House.

7 Now, these, of course, are the leaders of
8 the previous Legislature and we have no idea at all as
9 to whether they will be the leaders of the incoming
10 Legislature. We don't know whether Bill James will be
11 president of the Senate or not or Marvin Mandel speaker
12 of the House or not.

13 However, when we discussed this with the
14 Governor, he suggested -- well, first of all, he said,
15 too, that he did not know and refused to make any pre-
16 diction as to what the leadership would be in the Legisla-
17 ture, but suggested that it would be highly desirable for
18 us to have these preliminary discussions with the previous
19 leaders, so that they would be familiar with what was
20 being done and also, so that we could get their thinking
21 going on this problem of how to elect delegates.

1 I might say that there has been apparently
2 a great deal of conversation back and forth among members
3 of the Legislature, both old members and newly elected
4 members, on this question, anyhow. In any event, we
5 are going ahead with these conferences with the leaders
6 I have indicated.

7 In addition, we discussed the question at
8 some length with Senator Tydings. I hope to have a
9 similar discussion with Senator Brewster and, at the
10 suggestion of the people we have talked to, hope soon
11 to have a discussion with the incoming Executive of
12 Baltimore County, Dale Anderson.

13 These discussions, I might say, are not
14 at all to persuade the people we are talking to to any
15 particular view. Indeed, one of the problems is that
16 we are unable to do this. We can't say the Commission
17 is definitely going to recommend this or that. The
18 sole purpose is to make them alive to the problem,
19 because what we do hope to do is to have a bill sponsored
20 by this Commission introduced in the opening days of the
21 Legislature and we would hope that it would be acted on

1 promptly and not be delayed until the closing days of
2 the Legislature.

3 Three other things I want to mention before
4 we start in the consideration of the committee reports.
5 One is, you will notice I did not include in the agenda
6 a consideration of the last report of the Committee on
7 Elective Franchise dealing with the preamble, and the
8 reason we did not was it seemed to us that the
9 Commission, individual members of the Commission, could
10 get a much better feel for what they really wanted in
11 the preamble if they had before them the complete text
12 of the Constitution to the extent that we have drafted
13 provisions for it at the present time.

14 As I indicated at the last meeting, I had
15 hoped to have this circulated to you before this meeting.
16 We haven't been able to do it. I do have a complete
17 copy, but we want to give it a check once more to make
18 sure that we have picked up all of the changes that the
19 Commission has thus far adopted. I would hope that in
20 the coming week we will send each Commission member a
21 copy of this and, as heretofore indicated, we would like

1 each member to review it carefully for both the obvious
2 and the not so obvious errors, but also for inconsistencies
3 or mistakes that we may have made in failing to pick up
4 corrections made, and this is particularly important for
5 the Chairmen of each committee to review their particular
6 parts very carefully with the reporters, so that we can
7 at least be sure that the draft that we are now circulating
8 or will be circulating is accurate.

9 To save us time, please don't delay this
10 and then write letters. Get on the telephone, if you
11 find any corrections, and dictate to John or to me
12 or our secretaries whatever you have, so we can make the
13 changes right away.

14 As you know, we have had talks at great
15 length throughout the course of the Commission meetings
16 about the schedule to be attached, but we have never
17 really come to grips with it until the Committee on the
18 Judiciary Department attempted to work out a schedule
19 with reference to their article. We were thinking that
20 that committee might be sort of the guinea pig for the
21 Commission in the schedule because, perhaps, there are

1 more difficult problems in connection with the schedule
2 for the Judiciary Department article than with reference
3 to the others. That committee had hoped it would be
4 able to draft a schedule.

5 Their preliminary attempts to do so and
6 the very full discussion of it indicated that there are
7 major policy questions to be considered which made it
8 simply impossible for them to do so as quickly as they
9 had hoped.

10 Our feeling about it, and when I say our,
11 I mean the staff, now, is that the schedule can't very
12 well be drafted until we have the whole discussion fairly
13 well put together, because the kind of thing that you
14 are thinking about here is, for instance, the date as
15 of which the discussion or any particular part thereof
16 shall take effect, and the effect of this on the terms
17 of elected officers.

18 To illustrate, if you deferred the taking
19 effect of the judiciary article until say January 1, 1971,
20 you would not have to worry about special provisions with
21 reference to the terms of office of Clerks of the Court

1 and others, sheriffs and state's attorneys, and so forth,
2 because their terms are just beginning in November, '66,
3 or December, '66, would have expired by that time.

4 However, that is a major policy decision for
5 the Commission, whether it would be politic to defer the
6 effective date of the judiciary article from 1968 until
7 the end of 1970.

8 Similar decisions will have to be made
9 with reference to other articles, particularly as to
10 preserving the pension rights and salary rights of
11 elected officers in every branch of the government.
12 Accordingly, what we will try to do is to get the whole
13 Constitution circulated to you and then the staff will
14 try to get up some suggestions as to a schedule and
15 circulate that among the Commission members as the basis
16 for our discussion.

17 Only one other thing, I think, we need
18 mention in connection with the schedule and that is
19 that we have been assuming, I think, many times in our
20 discussions that the schedule would be not only a
21 temporary thing, that would not continue to be printed

1 with the Constitution over the years, but also that it
2 could be amended by the Legislature. Now, it's obvious
3 that there will be some provisions in the schedule which
4 will be of constitutional dignity and beyond the power
5 of the Legislature to change and there will be some
6 provisions which we would deliberately want the Legisla-
7 ture to be able to change, so that the schedule will have
8 both characters.

9 Now, thirdly and finally, the next meeting,
10 the next regularly scheduled meeting is Monday, December
11 19. Since everyone has that date already on his
12 calendar, we will not attempt to schedule a meeting
13 at any other date, but would like you to reserve the
14 entire day, perhaps an evening session, also. We would
15 like to try to schedule the group photograph at sometime
16 during that same session and since we are very, very
17 anxious that the photograph include every member of
18 the Commission, we will, prior to the 19th, send a card
19 or a letter around to ask you to indicate to us very
20 promptly if there is any particular time of that day in
21 which it is absolutely impossible for you to be present.

1 Let me ask you, however, to make every possible effort to
2 be present throughout the entire session and then we
3 will have a better chance of having the photograph with
4 everyone present.

5 Now, before we start with the consideration
6 of the reports, is there any other announcement or
7 matter of general interest anybody wants to mention?
8 If not, we'll move right ahead then to a further
9 consideration of the report on the Committee on Conven-
10 tion Procedures. Mr. Scanlan?

11 MR. SCANLAN: As you will recall, in our
12 Second Report, which was before the Commission a
13 couple of months ago, we had an extended discussion and
14 debate, I believe, or both, on the question of the manner
15 of electing delegates. Our committee had unanimously
16 recommended that the delegates be elected from the
17 counties at large, in other words, the requirement will
18 be residence in the county and the delegates in that
19 county would be elected by all the citizens of that
20 county, with the exception of Baltimore City where the
21 delegates would be elected from the traditional legislative

1 districts of the City of Baltimore, and I don't want
2 to go over the arguments on both sides, but our
3 committee basically felt that this was a better way,
4 better calculated to secure a higher quality delegate.

5 If it's going to be a non-partisan election,
6 hopefully, citizens groups, the League of Women Voters
7 and leaders of both political parties might agree on the
8 type of a slate that would bring to Annapolis the dele-
9 gates of the quality we would hope will go there and are
10 needed, badly needed, if we are going to come up with
11 truly fine Constitution.

12 There were good arguments on the other
13 side, however. There was a concern expressed by a
14 number who participated in the debate that especially
15 in Baltimore County there was a good chance of a political
16 machine using all its resources would be able to secure
17 the election of a great majority, if not all the
18 delegates of a particular county and especially, as I
19 say, Baltimore County.

20 These arguments were expanded upon by both
21 sides in that debate and I think the vote was a substantial

1 one in favor of the position of the committee.

2 I think it was around seventeen to six.

3 Since that time, as the Chairman indicated
4 in his opening remarks, and which these letters I think
5 you have before you indicate that there has been consider-
6 able reaction to the tentative decision reached by the
7 Commission and a number of people, either directly or
8 indirectly, have in effect asked the Commission to
9 reconsider its position on this issue.

10 At the last meeting of the Committee on
11 Convention Procedures held several weeks ago after this
12 storm had arisen, or at least since the storm had been
13 detected, we reconsidered the matter again, and again it
14 was the unanimous and firm opinion of the committee
15 that the recommendation we originally made was the
16 best one. We all concede that perhaps no solution is
17 a happy one. My own personal feeling is that those
18 who are so concerned about this situation in Baltimore
19 County neglect to take into account one important factor.

20 This is a special election, a one-shot
21 affair, and all previous experience, so far as we can

1 find out, in constitutional convention elections, for
2 instance, the most recent one in Michigan, 19 per cent
3 of the electorate participated and my own feeling is
4 that that type of election, it's one where the do-gooders
5 have the advantage. The saloon boys don't come out.
6 They don't have the three hours off under the collective
7 bargaining contract and the determined effort by civic
8 minded groups could, I think, result in the election of
9 a majority of high quality delegates.

10 Sometimes, you know, in the democratic
11 process you have to work and you have to fight and
12 you have to try to win. For instance, if we go along
13 with the proposal -- this is what some of the people in
14 Baltimore County seem to favor, electing the delegates
15 from districts, you are conceding to the machine right
16 off because if they are afraid that a machine can
17 dominate a county, a fortiori, it can dominate a
18 legislative district. So, you are sacrificing immediately
19 a good hunk of your delegates, under your own assumption.

20 This is my personal feeling and I don't
21 necessarily speak for committee in making this particular

1 point, but I certainly speak for the committee in saying
2 it remains our firm and unanimous opinion we were right
3 the first time. Maybe if we had the wisdom of foresight,
4 we could see maybe we were in error, and we won't know
5 until the elections are held, but that's the way the
6 committee feels about it; but I gather that others may
7 feel differently. I know in the previous debate there
8 were good arguments on the other side, but it's one of
9 those things you just have to pay your money and take
10 your choice, I think. We may have bet on the wrong
11 horse here, but that's where our money is going to
12 ride.

13 THE CHAIRMAN: Before we have further
14 discussion, let me report to the Commission the results
15 of a number of conversations that I have had and John
16 Brooks have had and both of us have had with various
17 groups.

18 First off, I don't think there has been
19 any recommendation of the Commission that has been made
20 that has produced the number of telephone calls that this
21 has. It has been at times in such volume that you think

1 it's constant, maybe for two or three hours. It's just
2 been one after the other. But, by and large, the calls
3 are coming from, I would say, pretty much the same type
4 of group. These are from people who have long been
5 interested in government, such as members of the League
6 of Women Voters who have very strong feelings on this
7 and expressed them not just through one person, but through
8 many persons. Also, other groups, young people, which
9 just formed and organized in the last election and
10 haven't any long political experience, but are very much
11 interested in the whole subject of constitutional
12 revision. Some of them are swinging way over to the
13 other extreme. They want an entirely different district-
14 ing, so that you would have no more than one delegate
15 from any district. In other words, that the distribution
16 be chopped down to the size of just one delegate.

17 I would say that reaction in Baltimore City,
18 and this is due to some misunderstanding of the previous
19 recommendation of the Commission and some feeling that
20 we were recommending citywide election of delegates,
21 was one of shock and horror at the idea of electing 43

1 delegates from Baltimore City, and when we pointed out
2 that in the city, we had said election in the districts, it
3 it was less difficult, but still the feeling expressed,
4 well, six, seven, or eight delegates from any one
5 district is still too many. This means that if you have
6 the kind of competition for the position that is antici-
7 pated, that you will have as many as 20 to 30 candidates
8 in every district. That's just too many to inform the
9 people about.

10 As I indicated at the last meeting, we had
11 discussed the whole problem with the Governor and asked
12 him to give some thought to it and then since the last
13 meeting at a further conference with him, we discussed
14 both this and the related problem of what means or
15 methods or organization could be availed of to insure
16 the election of the best possible persons and, without
17 giving you all the details, I think I can summarize his
18 views about it as follows.

19 First off, he is much concerned about the
20 matter, but doesn't profess to have any sure-fire cure or
21 suggestion or method of curing the problem. He thinks,

1 and I think all of us feel, that this isn't a problem
2 in the county which is going to have one delegate or
3 perhaps two, relatively small counties. He feels that
4 the people in the county, even without any great organiz-
5 ing efforts, will sort of almost by unanimous consent
6 agree that the outstanding person in that particular
7 county is so and so and that he would be elected.

8 He thinks there is a very, very serious
9 problem in the counties with the large number of dele-
10 gates, but does not limit this concern to counties with
11 as many as Baltimore County. He thinks, for instance,
12 even in Montgomery County, with as many as sixteen, you
13 have a very serious problem and a problem somewhat akin
14 to Baltimore County, in that your dense centers of
15 population are relatively few in number but are highly
16 concentrated.

17 I think -- he certainly did not express
18 any strong convictions as to the best way to insure the
19 election of delegates, but I think it's fair to say that
20 he certainly feels that, on balance, there is a better
21 chance with district elections. He recognizes as all of

1 us do the difficulties, the other considerations and
2 says quite frankly that it's certainly not a black and
3 white proposition.

4 As to the method of trying to secure the
5 election, he made a number of suggestions, most of which
6 are discarded, including things such as maybe we ought
7 to give consideration to some method of nomination, not
8 by another election, but by a commission or committees
9 officially appointed, perhaps selected by the Legislature,
10 perhaps by combined action of the Executive and the
11 Legislature; some method to try to reduce the total
12 number of candidates in the general special election.

13 He recognized, of course, that this would
14 pose terrific problems, if you tried to get the
15 Legislature to by a joint resolution name a state-wide
16 or region or county nominating commission, you would
17 have all sorts of problems, but he threw it out not
18 as a recommendation, but merely as something to think of
19 to illustrate his thought that if you could work out
20 some machinery to narrow down the numbers, it would be
21 helpful.

1 Now, this is important because the indica-
2 tions that we have gotten directly and also the
3 indications we have gotten indirectly through conversa-
4 tions with people like the Governor is that there is a
5 very strong likelihood that there will ve a very large
6 number of candidates, a large number of highly qualified
7 candidates, plus the indication that political groups
8 and special interest groups will be getting up slates
9 of candidates and whether they will be large numbers, I
10 don't know, but the probability is that they will be
11 not the kind of persons that one would hope would be
12 elected to the Convention, and this poses the problem
13 that the large number of highly qualified candidates --
14 you would scatter the votes, so that the probability of
15 less qualified candidates with the backing of a concen-
16 trated group would have a chance of coming out with a
17 plurality, at least, and be elected.

18 This has been recognized by many groups and has
19 resulted in a trend which is gaining momentum and which
20 also disturbs us because we think it's too early, and
21 this is an effort of civil groups to sort of be first in

1 the field and to form district-wide or county-wide
2 organizations to back particular candidates. Some of you
3 may have heard of one such group which started in the
4 past ten days, which was really a whirlwind effort, the
5 phone rang all one morning, people called about this, a
6 group called Civic.

7 Many of the telephone calls indicated that
8 this is a group sponsored by Dr. Eisenhower, President of
9 Hopkins. That is a little bit of an exaggeration, I
10 think. The sponsors of the group are two young men very
11 much interested. One is Dr. Eisenhower's administrative
12 assistant, Walt and the other is George Wills and their
13 motive, at best, they are trying to get a group together
14 that could solidify the efforts of all civil groups and
15 get away from the problem of having a scattering of
16 votes for the highly qualified people.

17 Part of the problem which many of the people
18 have suggested to us in this area is that if various
19 civil groups become interested, it's going to be awfully
20 difficult to get them to unite and combine on a slate
21 for any particular county. For instance, to use Baltimore

1 County again as an illustration, if you have the League
2 of Women Voters active, the various civil clubs, the
3 Lions, Rotary, Kiwanis, the Young Democrats, the Young
4 Republicans; all of these groups, each one of them are
5 going to have numerous members who are going to be
6 candidates and, for instance, we have had numerous
7 members of the League of Women Voters tell us definitely
8 they are going to be candidates.

9 This means to get them to agree on a
10 relatively small slate for any particular county is
11 going to be awfully difficult. This is a problem of
12 organization.

13 I think that about covers, in general,
14 the things we discussed, doesn't it, John?

15 MR. BROOKS: Yes.

16 THE CHAIRMAN: Mr. Bond?

17 MR. BOND: Mr. Chairman, I was on the
18 losing side of this bruising debate that Mr. Scanlan
19 talked about and I would just like to make a couple of
20 comments on what Al said and also on what the Chairman
21 said.

1 Unfortunately, I do agree with the Chair
2 that if the civic groups get in this, that it's going
3 to be very, very hard for them to coordinate and cooperate
4 and the pros can chop them up and put their own people
5 in, unless a miracle happens.

6 So, I'm really looking at it from afar.
7 I feel that there is not too much we can do about this,
8 except to provide, again, for district voting, because
9 in this case, the political machines and I say all
10 political machines have a place in our political life,
11 but in my opinion, if you have district-wide voting,
12 the political machines and the political organization
13 can be tempered with the civic groups.

14 I cannot agree with Al that you are going
15 to have a great non-partisan special election with
16 highly qualified people running supported by the League
17 and everybody else will fall in line. I think this is
18 unrealistic, because there's too much at stake in this.

19 This Constitution affects thousands of
20 jobs in the state government. It affects the judiciary
21 and the judges themselves, some judges have expressed to

1 me great concern about certain facets and the judges
2 talk to the lawyers and the lawyers talk to the
3 politicians and this thing, you just can't put it in a
4 vacuum and say we are going to have great people and
5 fine people going ahead with a great Constitution, and I
6 hope it will be a great Constitution, but we can't live
7 in a vacuum.

8 Therefore, another comment I have is that
9 I don't feel this affects Baltimore County alone. Of
10 course, since Mr. Eney's talk, I see I have very good
11 company, so far as the Governor agreeing. It isn't
12 Baltimore County. Baltimore County is one I happen to
13 be familiar with, but it's all the urban areas. As I
14 say, as long as this convention is going to have the
15 issue before it that it's going to have in affecting the
16 millions of dollars it's going to affect and the people
17 it's going to affect, I don't feel we can do much more
18 than try to make the nomination of delegates as close
19 to the people as possible and I think that's by districts.
20 I don't personally feel that a blue ribbon panel
21 of nominating commissioners may get through the Legislature.

1 I may be wrong, but again I urge we reconsider on the
2 district voting state-wide.

3 THE CHAIRMAN: Mr. Della?

4 MR. DELIA: Mr. Chairman, I know this is
5 quite a serious problem we are confronted with, but I
6 think we have to recognize a couple of factors and one
7 of them, I think, is the recent Supreme Court decision
8 on the one man, one vote rule. I believe that the problems
9 that we ran into in the past election have been solved
10 to a great degree insofar as the selection of people
11 running for public office and I think it would be also
12 solved for people running for a position such as delegate
13 to this Convention.

14 It is my opinion and the opinion of our
15 organization, as such, if you want to go that far, that
16 we should continue this kind of procedure in the election
17 for delegates to the convention. We're of the opinion
18 that you'll get a better selection of over-all candidates
19 who will be selected by the people more so than by
20 special groups or political organizations, as such, who
21 will be tuned in with the needs of the state more so than

1 with the needs of any political group. It's been our
2 experience over the years that the political machines
3 have been losing their strength to a great degree and
4 this will only give them an opportunity then to gain a
5 good bit of their strength back if we would have at large
6 elections. We feel that the state needs to be in the
7 hands of the people, regardless of whether they use good
8 judgment or not; this is the people's desire and the
9 people's will.

10 I believe that this committee here, because
11 of the contact that they have in their representative
12 areas could help the nominations of certain people by
13 spreading around the kind of information that is going
14 to be germane to the kind of people they think should be
15 selected as delegates to the Convention. I believe that
16 this group here could very easily submit certain names
17 in their own communities or the counties where they live
18 or subdivisions that could be encouraged to run and get
19 the political leaders and other civic groups to support
20 these kind of people.

21 I might say that our organization is

1 working with the different groups trying to get the
2 right kind of people to run and support the right kind
3 of people.

4 I feel we're in a position right now that
5 I think we have to recognize the change of climate in
6 political affairs at least that have come over the last
7 few years and that the only real concrete constructive
8 move will be to follow along with the same procedure
9 used in the last election, where people will be elected
10 from the representative districts and the subdivisions
11 in which they live. This way you are going to have
12 the election made by the people in those areas. The
13 selection of the people will be made by the people in
14 those areas and not by some group that is going to control
15 the county or the state as a whole.

16 THE CHAIRMAN: Dr. Templeton.

17 DR. TEMPLETON: A question, Mr. Chairman.
18 So far, the discussion has centered solely on Baltimore
19 County. Has there been any flak received from any other
20 regions or counties throughout the state?

21 THE CHAIRMAN: Yes, but not to the extent

1 as Baltimore County or Baltimore City. I would say
2 that has been the concentration. There has been some
3 in the Washington area, Prince Georges and Montgomery.

4 DR. TEMPLETON: Would it be against or
5 for districting?

6 THE CHAIRMAN: Well, I don't know -- it's
7 bothways and I couldn't possibly tell you which way
8 the preponderance is. I have this impression, and
9 Al can correct me if I'm wrong, that the Montgomery
10 County people, I would say that most of them appear to
11 feel that they would have a better chance of controlling
12 their situation county-wide. Now, whether this is
13 really the preponderance, I don't know. This is a
14 general feeling.

15 MR. SCANLAN: I can give you a little
16 example of that. I think it's a strong feeling that we
17 have been gerrymandered and the results of the recent
18 election seems to bear that out. We have eight
19 Republicans and eight Democrats in the western area.
20 Potomac, Chevy Chase, Bethesda, and the rest of the
21 upper county elected eight Republicans and, in the

1 process, some outstanding Republican servants went down.
2 Conversely, on the other side, in the concentrated area
3 of Wheaton and Silver Spring, eight Republicans went down
4 and this is the kind of situation we would be confronted
5 with in Montgomery County, we think, if we had to elect
6 our delegates to the Constitutional Convention. There
7 might be some very attractive fellows over in Silver
8 Spring that wouldn't have a chance if we couldn't put
9 together a county-wide situation. Conversely, there
10 would be some attractive people in Potomac you would
11 like to have that wouldn't have a chance if the pattern
12 of the last election was followed.

13 So, I think in Montgomery, on balance,
14 with people who really understand the situation and
15 looked at it would favor the at-large business.
16 Believe me, my views on this were formed before we had
17 these results.

18 THE CHAIRMAN: I might add this comment,
19 if I can remember how it was expressed to me, kind of
20 humorously, indicating somewhat the contrary view to
21 that. Somebody who said, as I remember it, Bethesda



1 and Chevy Chase think they have all the brains in their
2 end of the county, but Silver Spring disagrees. This
3 is a literal indication of a sour note to the contrary.

4 MR. SCANLAN: Chevy Chase and Bethesda
5 also have a higher preponderance of the other end.

6 MR. HARGROVE: We have been talking about
7 control of the political machine, but has there been
8 any discussion or has anything come to your attention
9 in regard to the plain, simple unwieldiness of an at-
10 large election, particularly in Baltimore County and
11 the counties, for example, I think Dr. Winslow says in
12 Baltimore County you would probably have 22 people to
13 elect and, in an at-large election, this becomes, at least
14 from the experience in Baltimore City, becomes a
15 rather difficult and certainly chaotic type of election.

16 THE CHAIRMAN: Yes, we have had this comment.
17 This has been one of the very strong objections. People
18 have said to us with reference to Baltimore County that
19 if you have at-large, that means you are going to have
20 at least 100 to 125 names on the ballot and maybe more,
21 and this is an impossible situation, and those who



1 thought that the Commission had recommended at-large for
2 Baltimore City were throwing up their hands and saying,
3 we're going to have 200 names on the ballot. We just
4 simply can't contend with it.

5 Let me make this comment. I think it is
6 very important for us to have this discussion now and
7 be thinking about it and getting your ear to the ground,
8 so to speak. I don't think it is necessary for us to
9 take final action today on this question. We're going
10 to have a meeting on the 19th, and that would be time
11 enough to finalize the bill. One reason that I do want
12 it discussed today, however, is that, having so many
13 people insisting to us that they want to organize to
14 combat the recommendation of the Commission on district-
15 wide elections and I have been trying to dissuade that
16 by saying the Commission has not yet made its final
17 recommendation on the bill to go into the Legislature.

18 Part of this same thing that I would like
19 to have discussion about is the problem of whether the
20 Commission should indicate any views as to how
21 organizations should combine to effect the election of

1 popular delegates. This is a matter that is really snow-
2 balling. We had a great number of organizations who
3 indicated they have been moving in this direction.

4 DR. BURDETTE: Mr. Chairman, I would
5 like to invite, with your permission, Mr. Scanlan to
6 give an estimate of a device that bears on this point,
7 which turned up in Montgomery County with reference to
8 the election of the School Board. I say this because
9 I think Mr. Scanlan is a more active engager in political
10 affairs than I, as an observer, although a fellow resident
11 of Montgomery County. Maybe the members of the Commission
12 are not aware that in Montgomery County, with the only
13 elective School Board in the state, that for the choice
14 of four members this year a county convention was called
15 under the auspices of a committee which has existed for
16 sometime on public schools and persons who were
17 interested in being endorsed by that group were asked to
18 come to appear before it.

19 The decision may have been made in the
20 committee, this I do not know, but in any event, it was
21 ostensibly made by the presence of the good many persons

1 who were invited to attend, in fact, there were several
2 hundred persons. The group had four to -- there were
3 four places to be filled and the group endorsed four and
4 they were all elected and my observation was when you
5 get down to the brass tacks of it, they had no really
6 great opposition. While there was no opposition, except
7 in the case of one of the four, it turned out to be quite
8 the minority.

9 The question I'm really raising, and
10 perhaps Mr. Scanlan will help us, whether or not that
11 would help in some of the counties, if there would be
12 a civic movement and people would be asked to express
13 their interest and those who wanted to be endorsed, it
14 would in essence become a community experience.

15 MR. SCANLAN: I remember the School Board
16 election. They stole that idea from Colonel Brooke Lee.
17 We had the same thing in the 1952 campaign. We had a
18 convention open to all Democrats. It's no surprise that
19 the slate represented Colonel Lee's choices. Therefore,
20 it was no surprise to me that the candidates of the
21 School Board primarily reflected the philosophy of the

1 people who called for the convention. That doesn't mean
2 I'm opposed to the idea. I have an open mind on that.
3 In fact, Senator-Elect Tom Anderson, to whom I've been
4 speaking, he's very interested in this bill and aware of
5 the importance of getting it through early and also
6 troubled by this nominating problem, he threw that out
7 when he said, couldn't we have sort of a county-wide
8 informal convention, not provided for in the Enabling
9 Act, but sponsored by the leading civic groups and both
10 parties, and I said, I suppose we could.

11 So, other people have thought of this.
12 It's a possible device, if properly handled, but it
13 also opens the charge of, you know, domination by a
14 few do-gooder types, et cetera.

15 THE CHAIRMAN: Mr. Martineau?

16 MR. MARTINEAU: I think this system has
17 worked rather well in Anne Arundel County, where the
18 volunteers for a charter have really wound up controlling
19 the county government by endorsing certain candidates
20 and going out and backing those candidates and I think
21 this is probably the one way that the so-called do-gooders

1 can try to exercise some control.

2 THE CHAIRMAN: I should have mentioned that
3 there has been some indication that that same group
4 might be interested in activating itself to have a slate
5 of candidates or to support candidates here. Dr. Jenkins?

6 DR. JENKINS: Mr. Chairman, what is the
7 parliamentary situation? I was under the impression we
8 were having a preliminary debate prior to a vote on
9 reconsideration of something, and now I understand that
10 this is just an informal discussion leading to another
11 vote. I'm sure you are more frustrated than I or any other
12 member of the Commission by the interminable but apparently
13 necessary debate and discussion about every point.
14 Knowing this Commission, I'm certain that if this is
15 put over to the 19th, all of these arguments will be
16 re-presented in order to refresh our minds, although
17 most of us are pretty certain of how we're going to
18 vote on this particular issue. What is before the
19 House?

20 THE CHAIRMAN: Well, I did not mean to
21 suggest in pointing out that it was not absolutely

1 necessary to take a vote on this day that we could not do
2 so because, of course, we could. At some point which
3 hasn't yet occurred, I anticipate there will be a motion
4 to reconsider the action of the Commission in approving
5 the recommendation of the Committee on Convention
6 Procedures that the election of delegates be by districts
7 in Baltimore City and by counties elsewhere.

8 DR. JENKINS: I don't think that quite
9 clarifies my thinking. At some point, not now, but
10 later --

11 THE CHAIRMAN: No one as yet has made such
12 a motion.

13 DR. JENKINS: My feeling is we should
14 go on and dispose of this and go back to trying to get
15 some of these items in the discussion.

16 THE CHAIRMAN: Well, Mr. Scanlan has
17 indicated the Commission's point of view and he obviously
18 does not intend to make such a motion. Does anyone move --

19 DR. BARD: I would like to make such a
20 motion, I had my hand up for some time, but I don't know
21 whether it's in order. At any rate, I'd like to speak

1 to the point.

2 THE CHAIRMAN: The motion would be to
3 reconsider the action the Commission had heretofore taken.
4 If it's seconded, it would be put before the Commission
5 without debate.

6 DR. BARD: I so move, but I did want to
7 present one point of view that has not yet been presented
8 with reference to this question and if my motion keeps
9 me from presenting that point of view --

10 THE CHAIRMAN: Your motion would, at this
11 point.

12 DR. BARD: All right, I will so move, any-
13 way.

14 THE CHAIRMAN: Is there a second?

15 MR. CASE: Seconded.

16 THE CHAIRMAN: Then the question arises
17 on the motion to reconsider the action of the
18 Commission in approving the recommendation of the
19 committee that the election of delegates be by districts
20 in Baltimore City, but be county-wide outside Baltimore
21 City. Under our procedure, the motion is not debatable.

1 MR. MILLER: A parliamentary question.
2 Are we voting to return the whole report for reconsidera-
3 tion or is it merely the point as to whether delegates
4 should be elected by district as was in the case of the
5 last election or as recommended by the committee? If
6 the issue is on that --

7 THE CHAIRMAN: Just that narrow point
8 at this moment.

9 MR. MILLER: And the doctor's motion is
10 not to reconsider opening up the whole field?

11 THE CHAIRMAN: No, sir, just that point.

12 DR. BURDETTE: Mr. Chairman, I'm not sure
13 whether this vote simply means it's a vote to consider
14 reversing the action or further discussion.

15 THE CHAIRMAN: The motion is not debatable.
16 A vote aye is a vote to reconsider, which will open it
17 up to further discussion. A vote no is a vote not to
18 reconsider, which will end the discussion. Are you
19 ready for the question? All those in favor, please signify
20 by a show of hands. This is a vote to reconsider.

21 MR. BROOKS: Fourteen.

1 THE CHAIRMAN: Contrary?

2 MR. BROOKS: One.

3 THE CHAIRMAN: The motion is carried fourteen
4 to one. Now, Dr. Bard, you wanted to comment.

5 DR. BARD: I would like to offer one
6 additional point that has not been stated so far. In
7 addition to the fact that the ballot would be unwieldy,
8 in addition to the fact that district voting would be
9 more democratic, I would like to submit a point and first
10 two questions that needn't be answered at the moment.

11 Which counties were finally required to
12 set up districts when reapportionment took place? That
13 is the first question. I know that Montgomery, Prince
14 Georges, Baltimore, Anne Arundel, I think one or two
15 others which were in debate, but at least those.

16 The second question. Have we not said
17 that we do not desire more than six representatives in
18 any one district? As I remember, our own legislative
19 department on this, this is the position we held with a
20 good deal of strength.

21 Now, my point. There was a -- two points.

~~There were a good deal of debates in the General Assembly~~

1 with regard to this whole point of view at the time of
2 reapportionment and after much debate the General Assembly
3 decided that it was important to set up districting
4 in the larger counties. This was debated for a long
5 period of time, and my final point is that in all other
6 respects, we have set up the concept of the Convention
7 in terms of the practices that are now set forth as far
8 as the General Assembly is concerned.

9 By way of illustration, we are using the
10 same number of delegates as there are in the House of
11 Delegates and it just seems to me that if we are follow-
12 ing this concept in all other respects, would our position
13 not be more defensible if we followed it in ^{this} respect as
14 well? These are yet some additional points with
15 reference to the importance of accepting districting
16 for larger counties.

17 THE CHAIRMAN: Any further discussion?
18 Mr. Gentry.

19 MR. GENTRY: I have always favored the
20 county-wide election system because, really, I felt that
21 we'd get more qualified candidates in that fashion, although

1 it's been argued to the contrary here this morning, that
2 by district election you might favor more qualified
3 people because of the influence of the political machines
4 and whatnot. Certainly, a limitation by district would
5 also have an effect of limiting otherwise qualified
6 candidates because of the lower number per district.

7 As to the fears of the political machines,
8 I think we're unduly apprehensive of that. Certainly,
9 in the usual election, machines have operated through the
10 use of money and I think we're all sophisticated enough
11 that we know the type and source from which the money
12 flows and I just don't see it in this particular election.
13 I don't see the money coming out to give the machines
14 the wherewithal to operate.

15 Possibly a compromise, which hasn't really
16 been fully discussed as an alternative, would be
17 residence in the county, election by the districts.
18 That would give you the possibility --

19 MR. SCANLAN: The other way around.

20 MR. GENTRY: No, residence in the county,
21 election by the districts, which would mean your full

1 slate of qualified -- or full possible qualified
2 candidates could file and the election would be in the
3 districts, which would stem the influence of the machine.

4 MR. MILLER: Do I understand your thought
5 is that, in a particular county, it would be similar
6 to the British Parliament, that a person could be
7 nominated that lived in one district, but the vote would
8 be solely in another district in that county?

9 DR. WINSLOW: Right.

10 THE CHAIRMAN: Yes, I think that's the
11 question. The same procedure, I take it, that we have
12 adopted in the Article on Elective Franchise, I think
13 it's elective franchise. Mr. Della.

14 MR. DELLA: Just two points I wanted to
15 comment on, and I think there will be plenty of money
16 floating around in the coming Constitutional Convention
17 election. I also believe that the people are more aware
18 today of what is going on than they are given credit
19 for and I think if you just check over the people voting
20 on the question on the ballot, election by election, they
21 are becoming concerned, more educated.

1 I think when it comes to the selection of
2 people for delegates to the Convention, I think you are
3 going to select people based on quality and qualifications
4 and ability, more so than people who have no means of
5 meeting these qualifications. So, I'm not afraid of
6 this kind of an election in a respective subdivision.

7 THE CHAIRMAN: Mr. Haile?

8 MR. HAILE: I think in Baltimore County the
9 majority view is that the election county-wide produces
10 better men to serve and that is reflected in our position
11 over the last decade, with reference to our County
12 Council. I think also in most counties, if not all of
13 them, all but one, perhaps, the local governing bodies
14 are elected county-wide.

15 Now, in Baltimore City, they are elected
16 by district and our recommendation here is in Baltimore
17 City the delegates likewise be elected by district, but
18 in the counties, it still seems to be the majority
19 view and I believe it to be in Baltimore County the
20 majority view that an election county-wide is preferable
21 to an election by districts.

1 THE CHAIRMAN: In Baltimore County they
2 are elected county-wide, but their residence is limited
3 to district residence, contrary to what Mr. Gentry said.

4 MR. HAILE: Yes.

5 THE CHAIRMAN: Mr. Brooks?

6 MR. BROOKS: I might mention one suggestion
7 that was made, I think, by the League of Women Voters
8 in Baltimore County was the possibility of considering
9 a mixture of what has been discussed and that would be
10 to elect one or two representatives per district and
11 all the others county-wide, so there would be a third
12 to half or even two-thirds of the people elected county-
13 wide or certainly a third. In Baltimore County the
14 situation is there are seven districts, each of which
15 has three representatives, except one which has four,
16 and one proposal might be to elect two per district or
17 the one that has four, three, and elect the other seven
18 county-wide, to do this in any of the counties that
19 have more than seven or eight candidates.

20 THE CHAIRMAN: Mr. Scanlan.

21 MR. SCANLAN: This would only create more

1 confusion.

2 Number one, there is the complexity of
3 it. Two, it's sort of placing some discrimination.
4 You are placing the delegates on non-equal footing.
5 Some of the delegates would have to run county-wide and
6 the others have a relatively smaller area in which to
7 campaign. Finally, after they are elected, human nature
8 being what it is, those elected from the county at-large
9 would somehow get the idea they carry a more active
10 mandate from the people.

11 MR. BOND: I wonder if we could get an
12 answer to Dr. Bard's question, which is how many
13 counties have districts and how many representatives run?

14 MR. BROOKS: I think there are only four.
15 The statute requires any county with over a certain
16 number of representatives is to subdivide them and elect
17 them on a county-wide basis, and I think that number is
18 eight. As far as I know, I think Anne Arundel is the
19 smallest that qualifies. So, it's Prince Georges, Montgomery,
20 Baltimore County and Anne Arundel.

21 MR. BOND: Those are the four counties.

1 MR. BROOKS: Yes.

2 THE CHAIRMAN: Mr. Martineau.

3 MR. MARTINEAU: I wonder if we should limit
4 ourselves to that. It seems to me we ought not think
5 in terms of the way the Legislature has done it, but the
6 problem seems to be Baltimore County and Baltimore City
7 and I see no reason why we couldn't recommend that
8 Baltimore City and Baltimore County follow a district
9 basis and the rest of the counties be county-wide,
10 if that would solve most of the objections to our proposal.
11 I haven't been aware of any strong feeling in Anne
12 Arundel, Prince Georges, or Montgomery Counties that
13 districting is necessary, although we have gotten a lot
14 of it from Baltimore County.

15 THE CHAIRMAN: We have some from Anne
16 Arundel, some of the same types of groups. Mr. Scanlan?

17 MR. SCANLAN: Mr. Martineau's suggestion
18 is not a bad one and we could have some peripheral
19 discussion of it. If it was the feeling of the full
20 Commission that there should be some change to accommodate
21 Baltimore County, I suggest the simplest way to do it

1 would be to provide language which would indicate that
2 delegates would be elected from the counties at-large,
3 except in those counties that were entitled to more than
4 sixteen delegates, pursuant to chapter so and so of the
5 Laws of Maryland of 1965, and the City of Baltimore.

6 You have there, I think, a reasonable
7 territorial classification and would put to rest any
8 possible challenge that you were discriminating on the
9 basis of representation of voters in one political section
10 of the state as opposed to others.

11 THE CHAIRMAN: Mr. Case?

12 MR. CASE: Mr. Chairman, I have very
13 mixed emotions about this. I think, it boils down in
14 my mind as far as Baltimore County is concerned to
15 almost a practical thing rather than a theoretical
16 thing. I think you can get good people through both
17 methods. The question really is, will you from either?
18 Now, I agree with my good friend Walter Haile that in
19 Baltimore County we have felt over the years that county-
20 wide elections would probably bring, in the over-all,
21 the better qualified people and this is manifested by the

1 method by which the County Council is elected, but it
2 has to be remembered that the County Council is only
3 seven, and what you are talking about here are twenty-two.

4 While selecting seven people from a slate,
5 whether it be ten or fifteen or seven or seventy or
6 one hundred, it is quite a different thing, I think,
7 from selecting twenty-two people who are the best people
8 and this leads me to question whether or not these two
9 subjects that we were talking about before the motion
10 was made aren't really more closely related than at first
11 I certainly felt, and I think Dr. Jenkins must have felt
12 which sponsored his statement, namely, if it were possible
13 to devise some method which could reduce the number of
14 people who are going on the machine, that is to say, if
15 there were some way in which you could select or nominate
16 people, then I would think that in Baltimore County
17 probably the best method would be the county-wide
18 election.

19 On the other hand, if we're going to have
20 an everybody-can-file kind of deal, then it seems to
21 me that probably, and again, as I say, from a pragmatic

1 standpoint, the probabilities are that the best way of
2 handling it would be on a district basis. I don't know
3 whether it's possible to suggest a way to nominate, but
4 to me, having something like 150 people running at-large
5 and everybody in the county going in and picking out
6 22 of the 150, this is going to defeat the thing, the
7 very thing you are trying to achieve, in my judgment.
8 On the other hand, if you've got a lesser number and
9 they are defined and identified with, as somebody
10 called them, the do-gooders, let's more charitably say
11 the civic leaders, then I think you've got a chance to
12 really do the job.

13 I would suggest that perhaps some discussion
14 ought to be made toward the question of whether or not,
15 therefore, it is possible to devise a nominating proce-
16 dure before we have a final vote on this.

17 THE CHAIRMAN: Dr. Jenkins?

18 DR. JENKINS: I think this Commission would
19 make a mistake if it left out Baltimore County, whether
20 we have this by district or by county-wide. I think
21 perhaps we, by chance of appointment to this Commission,

1 we have more people here from Baltimore County than
2 any of the other counties that might be affected. There-
3 fore, they are more sensitive to the particular problems
4 in that county. If the principle of districting is valid,
5 and I happen to favor that, then it seems to me it's
6 valid for all of the urban counties that are covered by
7 districts.

8 THE CHAIRMAN: Any further discussion?
9 Mr. Bond?

10 MR. BOND: I agree with Dr. Jenkins, it's
11 the principle of districting, of getting the vote close
12 to the people should be valid for all the counties
13 affected.

14 I am concerned by what Mr. Case said.
15 I've been thinking about this matter of nominations
16 and in some sort of weeding out procedure, and I must
17 confess off the top of my head reactions. One, that this
18 could be the one thing that could bottle this bill up
19 in the Legislature and cause more consternation and
20 confusion and perhaps hold it up, on the battles as to
21 how these nominating conventions would be constituted and

1 implemented and it could hurt the whole idea of a
2 Constitutional Convention by causing a lot of delay and
3 argument in the Legislature. That's my first reaction.

4 The second is, I feel if you think the
5 thing through, of a nominating convention, again you've
6 got to go back to your interested segments of your
7 population and your people and I think you are going to
8 have real problems in ever getting such a thing set up.
9 I wish Mr. Scanlan good luck, but I don't see how it
10 can be done.

11 THE CHAIRMAN: Dr. Burdette?

12 DR. BURDETTE: Could I comment on this
13 point, that the Montgomery County arrangement was not in
14 essence a legal nominating convention. It was simply a
15 group which got up a slate and anyone else could file
16 who pleased to do so, but considering the civic prominence
17 of the convention and the way it was open to the large
18 part of the citizenry, very few of us did file.

19 MR. BOND: This could very well happen.

20 DR. BURDETTE: There was no legislation.

21 THE CHAIRMAN: Mr. Della?

1 MR. DELLA: Mr. Chairman, on this particular
2 point, I think, my gosh, we have an awful lot of smart
3 people on this committee and I can't see the wisdom of
4 trying to limit the amount of people who would want to
5 file. We're talking about a democratic administration.
6 I'm not talking about Democratic versus Republican.
7 I'm talking about a democratic system. We're a free
8 government. Everyone has a right under our constitution,
9 should have the right to file for any position they want.
10 If we start to limit/^{it}to caucusing or to how many people
11 can run, you are just opening doors for a flood of
12 cases in the courts.

13 Now, I think, if we want to try to get
14 this thing moving in the direction we want, the nominations
15 to the convention should be free to anyone who desires
16 to file. It's going to be up to the people, the
17 organizations interested in these particular nominations,
18 to try to get the best people to be nominated, so they
19 will be the convention delegates; but I think if we
20 try to limit the amount of people who can run and the
21 method, we're going to run into serious problems with the

1 courts.

2 DR. TEMPLETON: Mr. Chairman, a few moments
3 ago Mr. Scanlan informally put into language a proposal
4 that would maintain the county-wide basis with the excep-
5 tion of Baltimore City and the four counties. Could
6 not his committee easily frame that language on the 19th,
7 and meet your agenda by voting on it on the 19th?

8 THE CHAIRMAN: Let me make a suggestion I
9 had in mind, a somewhat similar thought, but before I
10 do, let me make a comment.

11 I was one of the members of the Commission
12 who voted the last time we acted on this in favor of the
13 county-wide election and I confess that I still lean
14 to it in theory. However, I have two other thoughts.
15 One, as expressed by Mr. Scanlan, there isn't any
16 certain one and only solution to this problem and it's
17 sort of exercise your best judgment and be done with it.

18 I must confess, however, that since the
19 last action of the Commission, the thing that has given
20 me more concern is not the tremendous amount of reaction
21 we have gotten as nearly so much the indication of the large

1 number of candidates. I have said that on the basis of
2 statements made to me, both directly and indirectly, as
3 to the number of people that would file, I would not
4 be at all surprised if we would end up with as many as a
5 thousand candidates.

6 Now, if this happens in any populous county,
7 I think, as Mr. Case has indicated, you just simply have
8 an impossible situation. It just simply would not be
9 feasible to select out of a group of 120 or 125 or 150
10 candidates. Maybe it's possible to work out a nominating
11 procedure, maybe it's not. Maybe it's possible to work
12 out a dividing line between the largest practical number
13 that you can elect from any one district. I think it
14 probably is.

15 We have no motion before us at the moment and
16 I was going to suggest, if anyone feels so inclined,
17 to move that the consensus of the Commission is that the
18 election of delegates should not be on a county-wide
19 basis in the more populous counties, but to refer back
20 to the committee, with instructions to consider and
21 report at the next meeting on two points.

1 One, whether it is possible to work out any
2 kind of nominating procedure or any other device that
3 would reduce the number of names on the ballot and whether
4 it's wise to do so, and secondly, if not, to recommend
5 a breaking point at which you go from district to county-
6 wide elections. I don't think this should be just
7 arbitrarily the four counties. Maybe there is a different
8 breaking point. That's merely a suggestion.

9 MR. CASE: I'll make that motion.

10 THE CHAIRMAN: Is there a second?

11 DR. BARD: I second it.

12 THE CHAIRMAN: Mrs. Bothe?

13 MRS. BOTHE: I don't want to re-open this
14 issue necessarily, but in view of the large number of
15 candidates there may be, I suggest that perhaps the
16 committee might reconsider that they are not even going
17 to be in alphabetical order, when you have to select
18 between a thousand odd names, if there are going to be
19 that many.

20 MR. SCANLAN: Still in there plugging.

21 THE CHAIRMAN: Dr. Bard?

1 DR. BARD: I would like to offer one
2 suggestion and perhaps it doesn't conform with this
3 motion, but it seems to me the committee may have a
4 feeling that there are greater numbers who favor going
5 along with the so-called compromise position which would
6 be to make the exception for Baltimore County alone
7 than I have.

8 I have a feeling that this particular
9 Commission believes that any principle that is set forth
10 should be applied broadly rather than to one county alone
11 and therefore I am suggesting that at some point before
12 we close this total discussion, we might have sort of a
13 unofficial feeling of the Commission in this one respect,
14 so that we might guide the committee in its deliberation.

15 THE CHAIRMAN: Well, to not confuse the
16 issue, could we have that as a motion afterwards?

17 DR. BARD: Right.

18 THE CHAIRMAN: Dr. Jenkins?

19 DR. JENKINS: Mr. Chairman, I oppose this
20 because I think we ought to make a decision now. I
21 don't know whether I'm just feeling mean today or whether

1 I'd like to see this Commission get on and complete this
2 job without many additional meetings. May I insert this
3 parenthesis? Are we still on the three-minute, speak
4 only one time on the motion? If we're not, I would urge
5 the Chairman to enforce this.

6 THE CHAIRMAN: We should be and I have
7 not enforced it.

8 DR. JENKINS: And it is almost 12 o'clock,
9 and with this motion, it means another two-hour discussion
10 later. I think it should be decided this morning and I
11 oppose the motion.

12 THE CHAIRMAN: Any further discussion?
13 Mr. Sayre?

14 MR. SAYRE: My personal feeling is that I
15 don't want us to take any definite position on anything
16 at today's meeting and even the expression which you
17 sought for a consensus to be put in the form of a
18 motion, I think might be premature. Anything that we
19 would recommend, I think, is going to be subject to
20 objection from somebody from some county and we're going
21 to approach the Legislators to make changes and have now

1 approaches and I wonder has there been any discussion
2 by any of the leaders of the new Legislature as to what --

3 THE CHAIRMAN: Who are they? We've had
4 discussion with new members of the Legislature.

5 MR. SAYRE: Is there any way in which we
6 could get some reading of what their feelings might be
7 prior to our recommendation?

8 THE CHAIRMAN: On any broad scale, I would
9 say not.

10 MR. SAYRE: I'm thinking here that if you
11 have the Commission even make the exception for
12 certain populous areas to do it by district and that
13 could be formulated later, would it be feasible for the
14 Commission to do its own districting then, so it would
15 be on the lines that they feel would be more in favor
16 of good candidates and not be prejudicial to a political
17 situation, such as gerrymandering? Is it possible for
18 the committee to come up with something of that sort?

19 THE CHAIRMAN: This is implicit in the
20 motion. I think they would have the power to do that.
21 Mr. Scanlan?

1 MR. SCANLAN: I just want to say one thing
2 on this question of narrowing the number of candidates.
3 Our committee did wrestle with this problem not once,
4 but many times, and I guess I was in error in not mention-
5 ing it in my opening remarks. We considered increasing
6 the filing fee, we considered the possibility of two
7 elections, a nominating election, but we're confronted
8 with the time problem. Remember, this special election
9 would be held in June. The filings would be closed for
10 that in May. We hope the Legislature will pass this
11 bill early in the session. There's no guarantee it will.
12 It might pass it in the last days and there won't be
13 time. The committee concluded there just wouldn't be
14 time, however desirable it might be, and on that basis
15 we rejected this alternative.

16 THE CHAIRMAN: I think, Mr. Bond, as
17 Dr. Jenkins observed, you talked twice --

18 MR. BOND: I spoke only once on this
19 motion.

20 THE CHAIRMAN: My rule is only one --

21 MR. BOND: I haven't spoken at all --

1 MR. SAYRE: It was my idea Mr. Bond would
2 follow me, so if it's all right to continue --

3 MR. BOND: I will withdraw, but I haven't
4 said a word.

5 THE CHAIRMAN: Go ahead, let Mr. Bond speak.

6 MR. BOND: Only one comment. I'm opposed
7 to the motion. I agree with Dr. Jenkins, I don't think
8 anyone is going to change his mind between district-wide
9 and county-wide voting between now and next week.

10 MR. CASE: I think if you could narrow the
11 number of candidates in some way, I think this is crucial.

1 THE CHAIRMAN: Mr. Sayre?

2 MR. SAYRE: I think we have to have the pros
3 and cons on all these points a little more succinctly
4 marshalled and we might give more consideration to the
5 idea of a convention in each County, or something, but
6 here you have problems; will you have separate conventions
7 for Republicans and Democrats or one big convention where
8 all civic groups could be present, or where do you draw the
9 line? Do you have civic associations, medical and dental,
10 various organizations, and there is no limit where you can
11 go and also, if you did have a convention, there ought to
12 be some sort of rules that would be submitted in advance,
13 and I just think you have to have reasons why you would
14 rule this out, so when we do make a recommendation, the
15 legislature will consider it very favorably, in view of
16 all the other data we have.

17 THE CHAIRMAN: Mr. Case?

18 MR. CASE: Mr. Chairman, I would like to ask
19 the Chairman of this Committee a question.

20 THE CHAIRMAN: Go ahead.

21 MR. CASE: Mr. Scanlan, did your Committee at

1 any time discuss or debate the question of whether or not
2 there should be any limitation of candidates?

3 MR. SCANLAN: Yes.

4 MR. CASE: And what conclusion did you come to?

5 MR. SCANLAN: We concluded, however desirable
6 that might be, there was really no practical way we could
7 work it out, especially within the press of time that faced
8 us, and secondly, I think some of us felt that that partic-
9 ular policy wasn't a good thing. It may be that democracy
10 is a very poor form of government, but as Churchill said,
11 it's still the best devised, and we felt in the special
12 election where powers spring from the people, any attempts
13 to really curtail people from the right for standing for
14 the office would be -- I think primarily it was a practical
15 problem. There just wasn't time.

16 MR. CASE: Another question. Do you think then,
17 as Chairman of the Committee, there would be any useful
18 purpose served by referring this matter back to your
19 Committee with the idea that some new judgment or different
20 judgment could be made in this area?

21 MR. SCANLAN: Not on your first point. The

1 first assignment, was it possible to work out a nominating
2 procedure or some other device to limit the candidates.
3 On that, I speak for the Committee, it would be useless to
4 refer that back.

5 The second referral, as I understand it, was if
6 there was some break point we could put on the districts.
7 I suppose we could reconsider that, but my own personal
8 feeling is, with the possible exception of the compromise
9 Mr. Martineau threw out for discussion here, there wouldn't
10 be much achieved there, either.

11 MR. CASE: Mr. Chairman, that being the case,
12 and I have great and high regard for the Chairman of the
13 Committee, I would like to amend my motion.

14 THE CHAIRMAN: Go ahead.

15 MR. CASE: By striking out everything after, I
16 hereby move, and stating in lieu thereof that the Commission
17 go on record today as favoring district selection versus
18 all county selection of delegates to the Constitutional
19 Convention.

20 THE CHAIRMAN: Dr. Bard, were you the one that
21 seconded it?

1 MR. HAILE: I was the one that seconded it, but
2 I would suggest that it is not exactly accurate. I think
3 the Convention delegates should run by district only, in
4 the same manner that the present House of Delegates has
5 run and, therefore, they would be voting for something in
6 its own image.

7 MR. CASE: I accept that. That is what I meant.
8 That is what I tried to say, rather inartfully.

9 THE CHAIRMAN: You second it?

10 MR. HAILE: I second it.

11 THE CHAIRMAN: All right, as I understand it,
12 the amended motion would be that the Commission recommend
13 that the election of delegates to the Constitutional
14 Convention be by districts, in the same manner as the
15 election of delegates to the next House of Delegates. Mr.
16 Sayre?

17 MR. SAYRE: I move to table the motion, in view
18 I feel it is premature.

19 THE CHAIRMAN: Is there a second? No second.
20 Any further discussion on the motion of Mr. Case?

21 JUDGE ADKINS: I have a question. Do I understand



1 the motion to be that in those Counties which do not now
2 have districting, districting would not thereby be recom-
3 mended, as the result of his motion?

4 THE CHAIRMAN: That is correct. Any further
5 discussion? Are you ready for question? A vote aye is
6 a vote in favor of the recommendation that the election
7 of delegates to the Constitutional Convention by by
8 districts, in the same manner as members of the next
9 House of Delegates will be elected. A vote no would leave
10 the present recommendation in effect.

11 All those in favor of voting by districts raise
12 your hands. Contrary? The motion is carried fifteen to
13 four.

14 Now, I would like, without getting into any
15 great discussion, to have some expression of views because
16 we are meeting this problem every day, as to this method
17 of organization of groups to promote slates. Does anyone
18 have any suggestion? Mr. Miller?

19 MR. MILLER: I don't know whether this is a
20 suggestion, Mr. Chairman, but my thought is wouldn't we
21 be rather premature to make any recommendation, except off



1 the record, as people might, about political problems among
2 ourselves, but wouldn't it be better off the record than
3 to make any formal recommendation by this Commission, at
4 least until the Enabling Act is passed by the General Assem-
5 bly?

6 THE CHAIRMAN: I quite agree and I was not suggest-
7 ing this be a vote or any recommendation. The difficulty
8 is that Mr. Brooks and I are having telephone calls every
9 day saying that we are organizing this group, is this in
10 accord with the Commission's thinking, are we doing what
11 you like or do you dislike it.

12 We're a little at a loss as to how to reply.

13 MR. MILLER: If I may proceed, Mr. Chairman, my
14 thought is, difficult though it is, it is something this
15 Commission cannot control, anyway, and that for the time
16 being, or even in the ultimate analysis, as I see it now,
17 it will look rather bad if we recommend a Constitution and
18 then are named as a group endorsing any group of candidates
19 or any means of their selection; but leaving that out at
20 the moment, wouldn't it answer the problem of the day, at
21 least definitely, if not satisfactorily, to say that until



1 we know what the legislature is going to do, we don't
2 know what to recommend?

3 THE CHAIRMAN: Maybe. Mr. Case?

4 MR. CASE: I disagree with the congressman. I
5 think that this Commission, which has gained an amount of
6 prestige throughout the State, ought to bring that prestige
7 to bear through the press and otherwise to urge people to
8 combine, just as you say this Hopkins group is doing. I
9 think that is a very good idea, and I think we ought to
10 urge in a press release, yes, I think a press release, with
11 the business about what we decide today, that people ought
12 to combine to select, for the purpose of selecting the
13 very best candidates possible to this Convention.

14 Now, how they combine and what they do and how
15 they make the selections of slates obviously should be left
16 up to them and we shouldn't in any way attempt to dictate
17 that, but I think that you've got to have leadership from
18 some place. If the leadership doesn't come from this
19 Commission, it is going to be like the fellow who got on
20 his horse and rode off in all directions. You're just not
21 going to have any leadership, and that is exactly what is

1 going to happen, and I think it would be very appropriate
2 for the Chairman of the Commission to say in effect that
3 he thinks there ought to be cooperation with civic organi-
4 zations and groups throughout the State to the end that the
5 best possible group of candidates can be put forward for
6 public consideration at the election and then let them
7 take it from there and see what they do with it.

8 THE CHAIRMAN: Mr. Clagett?

9 MR. CLAGETT: What is the status of Judge Gray's
10 Committee at the present time?

11 THE CHAIRMAN: It is trying to get its final
12 report in and disband it. It has disbanded, actually. It
13 has its report finalized.

14 MR. CLAGETT: Would there be any possibility of
15 not permitting them to disband and let them be the central
16 organization to which these groups can be referred and let
17 them try to put it together?

18 THE CHAIRMAN: This was a thought I was going to
19 ask for comment on and that is whether it would be desir-
20 able to have that Committee or any other Citizens'
21 Committee on a statewide basis to try to act as the focal

1 point or steering committee for the other groups, and
2 secondly, when we see Governor Elect Agnew, whether we
3 should suggest this to him and have him recommend the
4 committee.

5 MR. CLAGETT: I would like to not make a motion --

6 THE CHAIRMAN: I don't think we need a motion.

7 MR. CLAGETT: I say I would like not to make
8 a motion and urge that point of view, and I would like to
9 make another comment. I don't see too much difference in
10 the views of Congressman Miller and Dick Case. I think
11 it's merely one in detail.

12 MR. CASE: In answer to that, let me say there
13 is no difference between the congressman and me in this
14 suggestion, because I think it would be wrong for this
15 Committee to have a subcommittee or group of it to do
16 this coordinating. I just think that that is wrong; to
17 have this Committee control the apparatus by which
18 candidates would be brought forward, which is going to be
19 -- it's bad. What I'm saying --

20 MR. MILLER: It would be politically unwise.

21 MR. CASE: Right. What I'm saying is that this

1 Commission should take the lead in stating that these
2 groups ought to get together and perhaps you, Mr. Eney,
3 or some other person or persons, Mr. Brooks or others,
4 can be helpful in guiding this thing, but I think this
5 ought to be a spontaneous thing from the citizens.

6 MR. CLAGETT: Don't you have to guide it in a
7 direction somewhere, and that where would be this overall
8 statewide citizens group.

9 MR. CASE: No, I don't think so.

10 MR. CLAGETT: Because, as a very practical aspect
11 of this thing and that is that John Brooks' office is
12 getting deluged and it's running out of time to get a lot
13 of other work its got to do done.

14 MR. BOND: Mr. Chairman, on this, I agree it
15 would be great for this Commission to start up a group
16 and pat it on the back, but I think it would be a great
17 mistake to try to lead it as to how these people would be
18 selected.

19 THE CHAIRMAN: Dr. Bard?

20 DR. BARD: Mr. Chairman, I think we do have some
21 kind of door which we might choose, and that is the

1 concept the election would be nonpartisan and, in this
2 respect, the citizenry does need guidance because this
3 isn't a normal procedure in an area such as Baltimore.
4 I think personally that the other committee, the Citizens
5 Committee rather than this particular Commission ought to
6 give guidance as to what is involved in a nonpartisanship
7 election of this sort.

8 It would seem to me the Committee might well
9 set forth some broad principle and that is the hope that
10 the best is free to run for the Convention and the civic
11 and other groups give support to such candidates.

12 THE CHAIRMAN: Mr. Martineau?

13 MR. MARTINEAU: Mr. Chairman, I think I agree
14 with everything Mr. Case has said, particularly about the
15 point that you have to have a little leadership, but I
16 think the leadership has to go not only to the election
17 of delegates to the Convention, but also to the formation
18 of the group which is to give the leadership for the
19 election of delegates and I think, somehow, I think we've
20 got enough here, enough imagination here to work it out,
21 whether it's this group or Judge Gray's group or some group

1 we are unconnected with.

2 Somewhere, officially or behind the scenes, make
3 sure that such a statewide organization is developed. How
4 this is done I think can be worked out in the future and
5 I don't think we have to take any official position on it,
6 but I don't think we ought to just sit back and hope that
7 the civic leaders will form such an organization. I think
8 we have to make sure that it is formed and I would hope,
9 whether it's the staff or working in connection through
10 Judge Gray's group or working with the Governor's office,
11 that such a group is organized.

12 I think it's got to be organized or, otherwise,
13 the plan would be a complete flop.

14 MR. CASE: Let me say I agree with Bob on this
15 and it seems to me it could be done in the same way the
16 group was organized to support the Niles Commission plan.
17 Three or four people got together in Bill Marbury's office
18 one afternoon and decided that's what they ought to do and
19 it spread out from there with different people.

20 Now, I think you yourself could probably pick
21 out one or two people who are civic minded in this

1 connection and get the ball rolling. Once you get this
2 ball rolling, and with the kind of press coverage it's
3 going to get, it will roll. It's just a question of kicking
4 it off, but I don't think it ought to be Judge Gray's group
5 because that is associated with this Commission.

6 THE CHAIRMAN: Any further discussion?

7 MR. SCANLAN: Also, I think the new governor
8 should have the opportunity, if it is going to be a new
9 Citizens' Committee, I think it unfair to perhaps saddle
10 the new governor with the Gray Commission, unless he wanted
11 it that way. I think he should be given the opportunity
12 to express his views on the merits of such a Citizens'
13 Committee, and how it is to be formed. Generally, I favor
14 it, however.

15 THE CHAIRMAN: Any further discussion?

16 MR. BOND: I don't mean to belabor this, Mr.
17 Chairman, but I do feel our primary responsibility is to
18 have a good Constitution in the hands of the Convention
19 and we should -- we all want good delegates, but we've
20 got to get a good product in and, if we have a good product,
21 we don't want to taint it by getting out too much in the

1 nominating arena. I think that is a thin line which has
2 to be watched, but which I have great confidence in the
3 chair.

4 THE CHAIRMAN: That seems to be the concensus,
5 and if I can take a moment to summarize it, it seems to me
6 it is a strong feeling the Commission ought not to be
7 involved either in the election of delegates or the nomina-
8 tions of candidates for the position of delegate or in the
9 formation of groups to secure such nominations, but that
10 the Commission ought to be interested in knowing that there
11 is formed some sort of a group that would take over that
12 function and that the less connection, official connection
13 between that group and the legislature, the Executive
14 Department of this Commission, the better.

15 Secondly, the real need here seems to be for a
16 Coordinating Committee because there apparently will not
17 be a lack of civic-minded groups. The problem is trying
18 to get their efforts coordinated and it might be that this
19 could be best accomplished by a device Mr. Case selected,
20 such as the formation of a Judicial Selective Council that
21 had its group concentrated in a few people and then spread

1 out. I think this constitutes the thinking and we will
2 move on to the next item of business.

3 This will be the Sixth Report of the Committee
4 on Miscellaneous Provisions. This is the report which you
5 have had for several meetings, now, and it is dated October
6 24, 1966. Now, we move to a consideration of the Sixth
7 Report of the Committee on Miscellaneous Provisions. Mrs.
8 Bothe?

9 MRS. BOTHE: Mr. Chairman, Mr. Noonberg popped
10 in here about twenty-five times, the last time expecting
11 to come to our business at any moment and I believe it went
12 all the way down to the preceding meeting at the Brown
13 Estate, for lunch, and he is not here now; but I think we
14 can proceed with at least a good part of the Sixth Report
15 without his assistance.

16 THE CHAIRMAN: Let me interrupt a minute. Will
17 he be here later? Would it help to move this up an hour?

18 MRS. BOTHE: I think if we can get started, we
19 will be able to dispose of it and the Sixth Report, with
20 one exception, doesn't deal with very weighty matters.

21 The Miscellaneous Provisions Committee is at

1 its usual, in recommending that certain provisions, most
2 of which are obviously archaic or unnecessary, not be
3 included in the new Constitution. The Sixth Report deals
4 with, I believe it is six sections in the present Constitu-
5 tion, only one of which do we recommend retention. We
6 will take them seriatim. Article I, Section 7, which ap-
7 pears on Page 1 of the report, is a provision which pro-
8 vides that if an elected or an appointed official refuses
9 to take the oath as provided for in Article I, Section 6 --
10 and you may recall that in the second or third meeting of
11 the Commission, way back, the Commission adopted a recom-
12 mended oath for the new Constitution. It makes provision
13 for what happens if someone refuses or fails to take it
14 and for what happens if he does take it and then violates it.

15 There are similar provisions in other constitu-
16 tions, but the Committee's unanimous view is that it is
17 really not necessary to place one in the new Constitution
18 of Maryland.

19 The matter has been judicially construed and
20 it seems that even without a constitutional provision for
21 office would be vacant in the absence -- if the individual

1 neglected or refused to take the oath. We feel it is
2 superfluous and unnecessary to have this provision either
3 in the Constitution or in the statutory law and we there-
4 fore recommend its removal.

5 Shall I move on or shall we --

6 THE CHAIRMAN: We will follow the procedure
7 and ask if anyone has a question or comment and, in the
8 absence of a motion to the contrary, the recommendation of
9 the Committee would be considered as having been approved.
10 Are there any questions as to this particular provision?
11 Any comments?

12 I have one question and I don't know that it is
13 answerable. Is there any indication as to when the office
14 becomes vacant in the event of a failure to take the oath?

15 MRS. BOTHE: We're going to consider, I believe,
16 a few sections down, a provision which does state manner
17 of qualifying for office and we recommend its deletion
18 as well. So, I suppose the hiatus will be lengthened if
19 we adopt that. No, there isn't, but I believe, without
20 having read the cases cited here, that there is an implicit
21 -- that if without having qualified within a reasonable

1 time, the office becomes vacant because -- I'm sorry Lou
2 is not here, but I understand one of these cases dealt
3 with that.

4 THE CHAIRMAN: I would suppose that if the term
5 of office, the beginning of the term is fixed at a particular
6 time, that that would be the time, but in so many instances
7 the term of office isn't fixed, as, for instance, the
8 Attorney General.

9 MR. GENTRY: The Attorney General would not be
10 an office created in this. Thinking back, every other
11 office according to the terms of the Constitution would
12 be fixed.

13 THE CHAIRMAN: What we proposed.

14 MR. GENTRY: What we proposed, that is the date
15 it would become effective, if he took the oath.

16 MRS. BOTHE: Of course, this provision doesn't
17 express when he should take the oath. So, the hiatus would
18 be present even if it were continued.

19 MR. HARGROVE: Mr. Chairman, I'm having difficulty
20 determining whether or not -- there are two provisions
21 in this section. Is it correct that only in the event where

1 there is a conviction would he be prohibited from holding
2 office of profit or trust thereafter, is that correct, or
3 does it apply where he refuses to take an oath or neglects
4 to take an oath?

5 THE CHAIRMAN: I assume it is the former, that
6 is, that the last provision is on conviction of violating
7 the oath. Is that correct?

8 MRS. BOTHE: That is our construction of it.

9 MR. HARGROVE: That is not very clear. Perhaps
10 it could be made --

11 MRS. BOTHE: I don't believe there has ever
12 been a case involving one who violated the oath after taking
13 it, under this Constitution.

14 MR. HARGROVE: You mean who has attempted to
15 gain a similar office?

16 MRS. BOTHE: I don't think the matter has been
17 construed. There are no annotations.

18 THE CHAIRMAN: I have a further concern about
19 what I suppose is this same question, the last paragraph
20 of your comment under this article, that it is the
21 Committee's feeling that the legislature could impose

1 this condition or would not this amount to prescribing
2 another qualification for the office that is not the
3 constitutional qualification and which would be beyond the
4 power of the legislature?

5 MRS. BOTHE: We look upon it as a mechanical
6 feature to complete the act of taking office and not a
7 qualification.

8 THE CHAIRMAN: I don't mean the first question
9 of qualification, but I mean the second, that any person
10 violating the oath shall, on conviction, be thereafter
11 incapable of holding any office of profit or trust. Your
12 comment as to that, the last paragraph of your comment
13 says, it is the Committee's feeling that it is unnecessary
14 to have that in the Constitution because that could be
15 imposed by statute, and the question I raise is whether
16 it could be imposed by statute or wouldn't such a statute
17 be prescribing an additional qualification for constitution-
18 al office and, hence, be beyond the power of the legis-
19 lature?

20 MRS. BOTHE: Well, constitutional office, I think,
21 Mr. Chairman, you would be correct. As to holding any

1 other office or appointment, I believe there already are
2 on the books prohibitions against certain people holding
3 office after a conviction for crime or other offenses.

4 THE CHAIRMAN: My only point is if it is deemed
5 necessary to have the prohibition that one convicted of
6 violating the oath of office could not thereafter hold any
7 other office of profit and it is deemed necessary to have
8 such a provision as to a constitutional office, isn't it
9 necessary to have it in the Constitution?

10 MRS. BOTHE: I would think yes, but, of course,
11 we're reducing the number of constitutional offices to the
12 point where it would hardly be of any practical effect,
13 and I think this has to be taken in conjunction with the
14 fact that in all the years of the existence of this
15 provision, it has never been operative.

16 THE CHAIRMAN: Then the Committee's recommenda-
17 tion is two-fold. One is to offices other than constitu-
18 tional offices, it could be required by statute, and as
19 to constitutional offices, you don't think it is necessary?

20 MRS. BOTHE: I think that way. Perhaps we
21 better correct it to the extent that there is some conflict

1 with constitutional offices and in our comment --

2 MR. SCANLAN: In other words, if the legislature
3 prescribed the penalties for violating the statutory oath
4 of public officials, including the prohibition against
5 holding public office of trust, and a man violated that
6 oath and was convicted for that and thereafter stood for
7 State Senator for his County and was elected, he would be
8 qualified and you couldn't stop him because the constitu-
9 tional qualifications would override the statutory pro-
10 hibition that the legislature proposed; isn't that true?

11 MRS. BOTHE: Apparently, that is true.

12 THE CHAIRMAN: Any further comments? Let us
13 move on to Article III, Section 50.

14 MRS. BOTHE: Article III, Section 50, I think
15 perhaps I best read. It says that the General Assembly
16 of Maryland shall have the power to provide by suitable
17 general enactment for the suspension of sentence by the
18 Court in criminal cases; for any form of the indeterminate
19 sentence in criminal cases, and for the release upon
20 parole in whatever manner the General Assembly may prescribe,
21 of convicts imprisoned under sentence for crimes.

1 MR. HETTLEMAN: You skipped one.

2 MRS. BOTHE: You're quite right. I don't think
3 I need to read Section 50, of Article III, the effect of
4 which provision is to require the legislature to make it a
5 crime to bribe or attempt to bribe a public official or for
6 a public official to receive a bribe. We had little
7 difficulty in deciding that this was a matter to be treated
8 by statute, and already Article XXVII, Section 23 would
9 cover the situation.

10 THE CHAIRMAN: Any question or comment? The
11 same comment would apply as to this section, I take it,
12 namely as to a constitutional office, it would probably
13 not be possible for the legislature to say the conviction
14 of bribery would disqualify one from holding office?

15 MRS. BOTHE: Mr. Eney, before you raised the
16 question of whether it would be possible by statute to
17 preclude a person from holding office of profit or trust
18 under the Constitution, by statute, whether that would be
19 possible --

20 THE CHAIRMAN: Upon conviction of either vio-
21 lating his oath or upon conviction of taking or receiving

1 a bribe.

2 MR. NOONBERG: I would think the legislature
3 could do it by statute, even though it is a constitutional
4 office, and what I think about is a conversation I had
5 yesterday with Bob Murphy about the Ober Bill and the Court
6 of Appeals of Maryland decision in Shell vs Simpson where
7 the Court feels that the legislature can prescribe certain
8 additional qualifications to protect the integrity of
9 various offices, even though the office may be a constitu-
10 tional office, although it may not prescribe additional
11 oath, because of Article XXXVII. They can prescribe the
12 requirement to take additional affidavits, which the Court
13 of Appeals of Maryland indicated and Bob Murphy, as Attorney
14 General, feels that although this is an affidavit and it is
15 an additional qualification, it is not an additional oath
16 of office as contemplated by Article XXXVII in the Declara-
17 tion of Rights.

18 THE CHAIRMAN: I can follow that, but it doesn't
19 seem to me to quite answer the question we are concerned
20 with here, but a rather different situation. It seems
21 to me the question here is that if John Doe who holds the

1 office of Governor -- let's say holds the office of
2 Treasurer, still thinking of this as a constitutional
3 office for the moment, is convicted of bribery or convicted
4 of violating his oath as Treasurer; can the legislature
5 provide that that conviction shall prevent him from there-
6 after occupying the office of Governor?

7 It seems to me that to do so in the case of a
8 constitutional office is providing an additional quali-
9 fication not set out in the Constitution.

10 MRS. BOTHE: Perhaps Judge Adkins might have
11 some comment on that, since this would be within the
12 Governor's prerogative to select who he pleased, barring
13 statutory --

14 JUDGE ADKINS: No, I have no comments. To tell
15 you the honest truth, I was reading something else here.

16 MR. CLAGETT: I have a question. What would
17 be the effect of a Governor's pardon after the legislature
18 had enacted such a statute? Wouldn't that remove this
19 qualification?

20 MRS. BOTHE: You mean first pardon the man and
21 then appoint him?

1 MR. BROOKS: I know of no constitutional author-
2 ity. I think this is an inherent power of the legislature.
3 Whether or not there are some limitations in the constitu-
4 tion or not, I think they can add on to those any time they
5 like.

6 THE CHAIRMAN: You mean the legislature could
7 impose qualifications in addition to the constitutional
8 qualifications?

9 MR. BROOKS: Yes, sir.

10 THE CHAIRMAN: I question that. Dr. Michener?

11 DR. MICHENER: This wouldn't necessarily be a
12 problem. Of course, the legislature would be allowed to
13 remove an individual, and this is not a double jeopardy
14 provision, to remove him from office and he is still liable
15 to conviction. I imagine an impeachment proceeding would
16 not be subject to the Governor's pardon.

17 MR. BROOKS: It is explicitly not, in the pro-
18 cedure on impeachment.

19 MR. SCANLAN: I suppose the problem is largely
20 eliminated by practical considerations. Governors don't
21 usually appoint people who have been convicted of bribery.

1 If the situation arises where someone convicted of bribery
2 is elected by the people, and there the practicalities
3 dictate that the people's choice stands, except perhaps in
4 Georgia, where Mr. Bond is not permitted to take a seat.

5 DR. BURDETTE: Senator Lang was convicted but
6 exonerated by a higher Court. That leaves the question
7 would such a reversal by the higher Court annul --

8 THE CHAIRMAN: The conviction wouldn't stand.
9 Mr. Gentry?

10 MR. GENTRY: I note we have provided in the
11 legislative article, Section 13, which reads that each
12 house shall be the final judge of the qualifications and
13 election of its members as prescribed by the Constitution
14 and the laws of the State, which would seem, at least as
15 to the legislature, there can be laws provided for the
16 qualification of office.

17 THE CHAIRMAN: Mr. Miller?

18 MR. MILLER: Haven't we provided in another
19 section or tentatively approved a provision that the
20 legislature should pass laws affecting the eligibility of
21 people to vote and many of these offices are only open to

1 voters, and it would seem to me it would be implied that
2 they can do the same thing with regard to whether a
3 convicted criminal could vote or whether he could hold
4 office.

5 THE CHAIRMAN: Any further comment? All right,
6 Article III, Section 60.

7 MRS. BOTHE: I read that prematurely and I won't
8 read it again. Article III, Section 60 was enacted in
9 1915, when a great deal of conflict in constitutional
10 thinking existed as to what the powers of the General
11 Assembly were with regard to the areas covered, that is,
12 suspension of sentence, imposing indeterminate sentences,
13 that is, a sentence without any minimum or maximum limits
14 and for providing for release on parole.

15 It was apparently felt at that time, when there
16 was very little use of any of these three prerogatives,
17 that there might be some conflict with the executive in
18 the event that there were no constitutional provision allow-
19 ing the legislature to pass laws -- or a conflict with the
20 judiciary and the executive -- if there were no provision
21 allowing the legislature to pass laws allowing the courts

1 and the executive agencies to grant parole and to suspend
2 sentences and permitting laws such as we do have in
3 Maryland, Article 31B, the Defective Delinquent Act, is
4 an indeterminate sentence law, that these could not exist
5 without constitutional sanction.

6 The thinking has changed considerably since. A
7 number of States have no such provision and still, I think,
8 all fifty States have provisions for a suspension of
9 sentence or for parole. This is almost a universally or
10 is a universally accepted means of handling criminal cases
11 in all States, without constitutional sanction in many
12 instances.

13 The Committee had very little difficulty in
14 determining that Sections A and C, the ones dealing with
15 suspension of sentence and with release upon parole, were
16 not needed in the new Constitution. We had a lot more
17 difficulty with B, regarding the indeterminate sentence
18 in criminal cases. The reason for this is that the Maryland
19 Defective Delinquent Act, I believe, is the only truly
20 indeterminate sentence law in the country. There are
21 laws labeled indeterminate sentences -- California has

1 what they call an indeterminate sentence, but actually
2 there is a maximum time which the defendant may be required
3 to serve under such sentence and, while a number of States
4 are considering indeterminate sentence laws, Maryland
5 retains the only one that actually is one.

6 In addition, the State of Florida has a constitu-
7 tional provision prohibiting indeterminate sentences.
8 Whether the new Constitution still contains it, we don't
9 know, but the matter is apparently of constitutional
10 dimension.

11 When Article 31B was on the drafting boards and
12 many of the best legal-psychiatric minds of the State were
13 engaged in the drafting of the bill, it was felt that no
14 constitutional sanction is needed. Research Report No. 29,
15 which was the document underlying the act, which Professor
16 Broderick of the Law School prepared, and he is Professor
17 of constitutional law, specifically states that there was
18 no need to have a constitutional backing for the passage
19 of an indeterminate sentence law.

20 However, the Court of Appeals and the Research
21 Report to some degree have leaned on the constitutional

1 provision and have said it wasn't necessary, but since
2 it is here, it put any doubts to rest of the constitution-
3 ality of such a law.

4 The Committee, of course, has no notion of
5 recommending any action which would place Article 31B in
6 jeopardy of constitutional attack by recommending the
7 deletion of the entire area of Section 60, Article III.
8 We checked with Frank Kaufman, now Judge Kaufman, who was
9 Chairman of the State Bar Committee dealing with criminal
10 laws at the time, and he was also on a committee which was
11 studying the possible revision of the Defective Delinquent
12 Act, and Judge Kaufman felt that the provision was unneces-
13 sary. I believe his letter is attached as an appendix to
14 the report.

15 We also contacted Professor Francis Allen at
16 the University of Chicago Law School who is an expert in
17 the area of constitutional law, and the indeterminate
18 sentence, and his response -- he assisted in the drafting
19 of the Michigan Constitution in this area, I believe --
20 and his response, stating that he felt the provision
21 unnecessary is also attached to the report. We took note,

1 as well, of some cases decided by the Court of Appeals
2 holding that the State had the right to detain a dangerous
3 offender for the health and safety of the people, and these
4 cases were not founded on any State constitutional provi-
5 sion.

6 After taking all these precautions, we came to
7 the conclusion that the deletion of the entire section,
8 including the indeterminate sentence part, would not
9 jeopardize Article 31B, that the balance of the provision
10 was no longer a constitutional necessity, so that we
11 recommend that subject matter not be included in the new
12 Constitution.

13 THE CHAIRMAN: Any questions? Mr. Scanlan?

14 MR. SCANLAN: I'm a little confused. I under-
15 stand that as to A and C, the major concern was that the
16 separation of powers doctrine in the old days led a few
17 Courts to say the legislature couldn't do this. When you
18 come to B, the indeterminate sentence, are you saying that
19 there was some concern and might be beyond the legislative
20 power, unless it is specifically mentioned, that that is the
21 better thinking authorities don't think it is necessary?

1 I always thought that the major opposition to the indetermi-
2 nate sentence law was based on the constitutional objection
3 of due process rather than separation of powers. Is that
4 not correct?

5 MRS. BOTHE: Yes, there is a major case just
6 decided out of Prince Georges County where for three weeks
7 the subject of due process under the Defective Delinquent
8 Act was under discussion and decision. However, I said
9 that for A and C, more than for B.

10 MR. SCANLAN: If that is true, if it is true
11 there may still be some question about due process, whether
12 we put it in the Constitution or put it in the statute,
13 it wouldn't make any difference; if it was beyond the
14 legislative --

15 MRS. BOTHE: No. The constitutional issues of
16 the Defective Delinquent Act, which is very much -- you
17 pick up a copy of the Atlantic Reporter and there are
18 invariably six or seven applications from inmates of
19 Patuxent questioning the constitutionality of the law,
20 but not as to the power of the legislature to have enacted
21 an indeterminate sentence law, but merely as to the due

1 process compliance that exists when such a law happens.

2 Of course, an indeterminate sentence law is some-
3 thing of a departure from standard legislation, because
4 traditionally the legislature says that a pick-pocketing
5 shall be an offense and the minimum penalty would be six
6 months and the maximum two years. When they say that being
7 a defective delinquent will subject you to an indeterminate
8 sentence, this is quite a departure from traditional legis-
9 lating and, for that reason, we had great hesitancy in not
10 leaving the constitutional authority to do it in the books,
11 but it seems quite unnecessary.

12 THE CHAIRMAN: Any further question or comment?
13 Mr. Sayre?

14 MR. SAYRE: I stand to be corrected, so it's
15 really seeking information. Under the rule making power
16 section of the judiciary article, would it not be under-
17 stood that the Court by rule would have the power on in-
18 determinate sentencing to suspend, or whatever, if not
19 provided by law through the General Assembly?

20 MRS. BOTHE: Of course, I don't know that this
21 would have any effect on our discussion, but I don't

1 believe the Courts rule making powers would be the source
2 of suspending sentences or parole, but that it would be
3 essentially either legislative or within the inherent power
4 of the Court.

5 MR. SAYRE: This does not enter into the practice
6 and procedure --

7 THE CHAIRMAN: I don't think so. I think the
8 rule making power might extend to procedures to be followed
9 by the Court in suspending a sentence, but not as to the
10 powers of the Court.

11 MR. SAYRE: So, this would be a legislative matter
12 altogether?

13 MRS. BOTHE: And also would rest within the
14 inherent power of the Court to some degree to suspend
15 sentences or grant parole, but this isn't in an area that
16 would be affected by the deletion or retention of this
17 section.

18 THE CHAIRMAN: Mr. Martineau?

19 MR. MARTINEAU: I think the Committee ought to
20 be commended on its choice of consultants from the academic
21 community.

1 THE CHAIRMAN: Any further questions? If not,
2 we move on to Article VII, Section 2, on Page 7.

3 MRS. BOTHE: Article VII, Section 2, deals with
4 the office of surveyor which is presently a constitutional
5 office. I suppose and presume that there is little question
6 but that office, where it exists and how it exists, should
7 be a matter of statute and not of constitution. We have
8 taken a few slightly more important offices out of the
9 Constitution and we propose that this follow suit.

10 THE CHAIRMAN: Any questions?

11 MRS. BOTHE: I might comment because of the many
12 delays in our reports, we have had our work cut out and
13 done for us by the voters, as far as the land commissioner
14 is concerned. We spent many hours debating him and then
15 the voters took care of it.

16 THE CHAIRMAN: Just so the record will be clear,
17 the voters took care of it by adopting the constitutional
18 amendment at the last election which abolished the office.
19 Article XV, Section 1.

20 MRS. BOTHE: Article XV, Section 1 provides that
21 an office holder, and I am summarizing it, whose compensatio

1 is derived from fees shall keep an account and make a
2 report to the Comptroller, and pay over the excess of any
3 fees over the salary of the Treasurer and generally provides
4 for the bookkeeping of various State officers who have
5 occasion to collect monies, such as trial magistrates in
6 the County. It also puts a maximum of \$3,000 on their
7 respective salaries.

8 This provision is very obviously archaic, deriving
9 from a time when there were a great many such people and
10 the amounts of money which they dealt with may have had
11 constitutional significance. Again, we recommend that it
12 be relegated to statutory or maybe even administrative
13 status.

14 THE CHAIRMAN: Any question? Article XV, Section
15 6.

16 MRS. BOTHE: Now we come to a more substantial
17 question, regarding the right of trial by jury in civil
18 proceedings. The section as it now exists, and I will
19 read it, since it is short, says, the right of trial by
20 jury of all issues of fact in civil proceedings, in the
21 several Courts of Law of this State, where the amount

1 in controversy exceeds the sum of \$5, shall be inviolably
2 preserved.

3 We have already, of course, had discussion on
4 the proposed new Declaration of Rights. That committee did
5 not deal with the question of jury trial in civil cases,
6 although Articles V and XXIII of the Declaration of Rights
7 do contain provisions relating to that issue. The diffi-
8 culty is, it seems, that this provision has been in the
9 Maryland Constitution since its beginning, in one form or
10 another. It is in, I believe, all the other Constitutions
11 of all the other States. Some of them have a dollar mini-
12 mum, as we do. Many of them have none.

13 This report, I might say, has been revised,
14 again as the result of the passage of time. We changed
15 the personnel of our Committee, which at one time was a
16 majority of the Committee favored the recommending the
17 deletion of this provision altogether. The tide has
18 turned, and I might say that the Chairman now is in a
19 lone minority. So that perhaps I cannot report on our
20 recommendation fairly by saying why -- but I can't explain
21 why we put it in without explaining why I wanted it out.

1 There are a number of difficulties inherent
2 in retaining the section. The first one is, of course,
3 is that in giving a right to jury trial in all civil cases,
4 regardless of the amount in controversy, in \$5, whether
5 you take it or leave it, is such a small amount that it
6 amounts to an absolute right, could create a tremendous
7 amount of unnecessary expense and confusion if availed of
8 by many litigants. It dates from the time when judges
9 were not to be trusted and juries were.

10 I think the reverse is often the case today.
11 More seriously, however, and this is a subject which Mr.
12 Case's Commission of the Maryland State Bar Association,
13 in formulating recommendations for the Courts of limited
14 jurisdiction, and this Commission, in going through the
15 judiciary article has had to contend with, is the question
16 of jurisdiction, exclusive jurisdiction of the Courts of
17 limited jurisdiction.

18 We contemplate that the District Courts which
19 this Commission has recommended be staffed by full-time
20 judges in every County of the State and will have exclusive
21 jurisdiction to a given dollar amount uniformly throughout

1 the State and that amount will probably today be at least
2 \$500, and in the course of time it may go up as high as
3 a thousand.

4 If the right of trial by jury in all civil cases
5 is retained, this would seriously conflict with the practi-
6 cal ability of the legislature to create exclusive juris-
7 diction in the lowest Courts, because anyone could pray
8 a jury trial and, by so doing, could take his case away
9 from the Court where it belongs.

10 The State Bar Committee met the problem by
11 recommending that the jurisdictional amount in the
12 Constitution be \$500. Our Committee was very hesitant to
13 put dollars in the Constitution. I believe if it goes in
14 here, it will be the only place where the same are mention-
15 ed and, inflation being what it is, it will probably
16 necessitate a constitutional amendment every time the
17 jurisdiction of the Courts of limited jurisdiction is
18 altered.

19 Thirdly, and perhaps this is the most interesting
20 or persuasive to me personally, is that the provision
21 doesn't really give protection to many people. It's one

1 thing to say that everyone shall have the right to call in
2 a jury of his peers and have determined whether he is right
3 or wrong or whether he owes money or whether he has to con-
4 tinue his marriage, or what, but the provision doesn't work
5 that way. It applies actually to a very limited class of
6 cases and that is suits at law where a right to a jury
7 existed at the time of the original Constitution, that is,
8 suits for money damages in a law Court.

9 In other words, a department store can sue you to
10 make you pay for the shirt you purchased, but if your wife
11 wants to take the shirt off your back in an equity or domes-
12 tic proceeding, you have no right to say that you want
13 twelve of your peers to decide whether she is right or wrong.
14 Workmen's Compensation cases and other situations where the
15 legislature has enacted an administrative remedy, in those
16 instances, an employee is not entitled as a matter of con-
17 stitutional right to have a jury decide whether he is 100
18 per cent or only 50 per cent disabled. That is up to the
19 legislature, what right he has in that regard.

20 MR. MILLER: Would the lady yield for a question?
21 It seems to me I saw an article somewhere recently that the

1 Constitution of the State of New York, or the proposal for
2 a new Constitution was being largely jeopardized, and it
3 may not have been New York, but one of the larger States,
4 because there was some question as to whether or not there
5 could be a law passed which would remove damage cases from
6 the right to a jury trial, that they thought there was a
7 great deal of pressure to make it possible, as in the
8 result of a typical automobile damage case, that it should
9 be decided by a Court without a right to a jury trial in
10 estimating the damages.

11 I am wondering if your Committee has considered
12 the implications of anything radical in changing this around?

13 MRS. BOTHE: Well, the Committee's recommendation,
14 of course, is that the provision be retained without any
15 monetary limit, so that the objections raised in New York,
16 I believe, and I may be incorrect, that what you are refer-
17 ring to is not a constitutional provision, but a proposed
18 statute in New York which would make automobile damages
19 subject to administrative rather than Court procedures.

20 MR. MILLER: It involved the Constitution, in
21 some amendment, at least, as I remember it.

1 MRS. BOTHE: It would require a constitutional
2 amendment under the New York Constitution, in order to do
3 this.

4 THE CHAIRMAN: Well, your answer to Mr. Miller's
5 question, though, is that the Committee, whether for his
6 reason or some other, is recommending that the right to
7 jury trial in civil proceedings be retained?

8 MRS. BOTHE: Actually, let me say this, that if
9 it were taken out of the Constitution, this by no means
10 would mean that the right to a jury trial would be neces-
11 sarily affected in any practical way. I don't think the
12 day after the new Constitution was enacted that our present
13 practices would, with regard to jury trial, be in any way
14 affected.

15 For instance, the Workmen's Compensation Act,
16 which is not protected by constitutional provision, today
17 there are statutory means whereby a jury can be called
18 upon to determine the nature and extent of a workman's
19 disability; but this is purely by statute and he cannot
20 demand this.

21 There are a number of other areas where the

1 legislature has seen fit to give jury trials, under certain
2 circumstances, where they would not otherwise exist. The
3 legislature, on the other hand, has not seen fit to grant
4 jury trials in domestic cases. A number of States provide
5 that you can have a jury to determine whether you left your
6 wife or she left you. Maryland does not.

7 MR. SCANLAN: Am I wrong, is there any implication
8 in the Committee's language that the equal protection of
9 trial by jury in civil proceedings would now be broader?
10 For instance, it flatly says every person shall have the
11 right of trial by jury in issues of fact in civil pro-
12 ceedings.

13 Suppose the General Assembly -- I suppose they
14 wouldn't have to amend this, but in a hypothetical case,
15 amended the Blue Sky law and provided, in addition to the
16 penalties for Blue Sky, the right of a purchaser to sue
17 for damages against those who misrepresented in connection
18 with the sale of securities.

19 Now, that certainly is a civil proceeding. True,
20 it is a new one, maybe, but it's a civil proceeding. Could
21 the claim be made, under the plain language of this

1 constitutional provision, that the legislature would have
2 to provide for a jury trial?

3 MRS. BOTHE: No, I think it has to be read in
4 connection with the history of the existing Section 6 of
5 Article XV. We preserved the crucial language in that
6 section in our recommendation and, presumably, I see no
7 reason why it wouldn't be continued to be construed by the
8 Court of Appeals in the same manner as Section 6 was, and
9 that is to apply only to actions which existed at the time
10 of the passage of the original Constitution, not this one.

11 THE CHAIRMAN: Before we have any further general
12 discussion, perhaps the other members of the Committee want
13 to comment on this. Mr. Gentry?

14 MR. GENTRY: My comment generally was that while
15 I originally started out favoring deletion, I was persuaded
16 by the fact that every other State has such a provision as
17 this. The State Bar Association recommends it and, while
18 I feel this Commission should be progressive and move ahead,
19 this is an area where I wouldn't want to step in and be an
20 innovator, and, for that reason, I was in favor of continu-
21 ing the provision. I don't think we have changed the

1 language from what it was.

2 THE CHAIRMAN: Mr. Haile?

3 MR. HAILE: I have always held the position we
4 should retain this.

5 DR. TEMPLETON: Our Chairman gave a good pre-
6 sentation.

7 THE CHAIRMAN: Any further questions?

8 MR. HARGROVE: In continuing the language of the
9 present constitutional provisions, we now, in doing this,
10 would have to look at what the new Constitution will have
11 in it. I think, in view of that, wouldn't it pose a rather
12 serious problem where we say, in the several Courts of
13 law in this State, because it seems to me, under the lan-
14 guage here, you could just as easily demand a jury trial
15 in the District Court, under the constitutional provision,
16 and perhaps could get it. Would it be better just to leave
17 out, in the several Courts, and it would then be up to the
18 legislature to say, well, you could have, such as you do
19 now in the People's Court, you could have a jury trial, but
20 you have to request a jury trial and the case would auto-
21 matically go to a Court where they have facilities, rather

1 than leave it in the wording we have here, because it
2 looks like it's almost mandatory, you insist on it.

3 THE CHAIRMAN: Mrs. Bothe?

4 MRS. BOTHE: I think perhaps Judge Hargrove has
5 a point when he talks about several Courts of law in this
6 State, in view of the recommendations regarding the single
7 Court system that we contemplate. Whether several law
8 Courts -- of course, several law Courts as used in the pre-
9 sent Constitution refers to the Courts when sitting as law
10 Courts.

11 Those of you who aren't lawyers may not recognize
12 that Courts sit with two heads, in equity and in law, and
13 the Constitution only refers to them in the capacity of
14 law Courts.

15 THE CHAIRMAN: Wouldn't the more direct answer
16 to Mr. Hargrove's question be the same as it was hereto-
17 fore, with respect to the People's Court, and I think the
18 Court of Appeals said that since you had the right of trial
19 by jury on appeal, that satisfied the constitutional re-
20 quirements. Mr. Case?

21 MR. CASE: Mr. Chairman, is this the place to

1 make a motion to amend this, because I think this is quite
2 bad?

3 THE CHAIRMAN: Yes.

4 MR. CASE: Well, I would move that this recom-
5 mendation, shown on Page 10, be amended by adding the words,
6 after the word proceedings, involving such amounts as may
7 be fixed by law, which would mean, in effect, that the
8 right to a jury trial in a law case would be preserved,
9 but that the legislature by act would fix the jurisdiction-
10 al amount.

11 THE CHAIRMAN: Before you discuss it, is there
12 any second?

13 MR. SCANLAN: I second it.

14 THE CHAIRMAN: Now, Mr. Case?

15 MR. CASE: Now, Mrs. Bothe has referred to the
16 Committee of which I was Chairman, the Judicial Administra-
17 tion Commission Committee of the State Bar Association,
18 which went into this subject at great length and upon which
19 a lot of the thinking, I'm sure, of this Commission was
20 based in the recommendation of the so-called District
21 Court, because it was in that report that the concept of

1 the District Court was made and it was that report that
2 was adopted unanimously, except by one, in a vote of the
3 State Bar Association's Annual Convention in Atlantic City.

4 Now, here is the problem. If you provide that
5 there shall be a trial by jury in every case, as they are
6 now limited, in practical effect, you wreck the system of
7 the lower Courts that you are trying to establish and you
8 wreck them in this way; that if a suit is filed in the lower
9 Court, you can immediately get a transfer by praying a jury
10 trial and there is nothing exclusive then about the juris-
11 diction and, as a matter of fact, the lower Court, the
12 District Court then really becomes nothing but a big mecca
13 for discovery. You get a lot of people to come down there
14 and then you can get a trial de novo in the Circuit Court
15 because of this provision.

16 Now, to meet that point and to preserve the
17 integrity of these lower Courts and to really make them
18 Courts and not just places where people can file suit and
19 then they can be transferred, and so on and so forth,
20 our Committee recommended and the State Bar Association
21 approved the method by which exclusive jurisdiction could

1 be vested in these Courts and couldn't be moved for any
2 reason.

3 MR. MILLER: With the right of appeal, though.

4 MR. CASE: With the right of appeal, but the
5 right of appeal on the record.

6 MR. MILLER: Not de novo.

7 MR. CASE: Right, and I gave you this background
8 because it leads to what we are talking about here. In
9 making this recommendation to try to put exclusive juris-
10 diction in the lower Courts, we came face to face with this
11 constitutional provision which says you can have the right
12 of a jury trial in a civil case for \$5 or more, and our
13 Committee recommended that it be raised to 500, because
14 this seemed to be the point at which the legislature in
15 most of the big Counties have established exclusive, so-
16 called exclusive jurisdiction in the People's Courts where
17 People's Courts exist.

18 I was not particularly happy with the \$500 limit.
19 I thought, as Mrs. Bothe has expressed herself, that a
20 \$500 limit, if it is good today, conceivably could not be
21 good ten years from now, but it seems to me that there is

1 no reason why the legislature cannot by law fix the
2 jurisdictional amount below which you don't get a jury trial.

3 Now, if this is done, then the integrity of your
4 lower Court system will be preserved. It will have exclu-
5 sive jurisdiction and the entire system will work.

6 Now, a possible answer to this might be, well,
7 let's go ahead and let the lower Courts impanel juries, too,
8 let the District Courts have juries, and this is, of course,
9 a possibility. But, I rather think, in smaller matters,
10 in the tremendous volume of cases that have to be put out,
11 the impaneling of juries, even if there are many juries,
12 if you will, is just a time consuming thing which doesn't
13 further the administration of justice.

14 Now, we've got an area of cases which I think
15 are more applicable to this argument than the ones Mrs.
16 Bothe mentioned, in the Workmen's Compensation cases, be-
17 cause, of course, you do have a jury trial on appeal, but
18 in the Federal Courts, in the Tucker Act cases, you have
19 no jury trial. These are Court cases against the govern-
20 ment. Personal injury cases of all kinds are tried and
21 tried well and expeditiously, without juries, in the

1 Federal Court.

2 So, it seems to me there is nothing inviolate
3 about the elimination of the jury trial. Certainly, in
4 my judgment, it ought to be eliminated in a jurisdictional
5 amount that the legislature deems proper, so that these
6 lower Courts can have the force and dignity that the Com-
7 mission wants them to have.

8 THE CHAIRMAN: Mr. Hargrove?

9 MR. HARGROVE: I think what Mr. Case is saying
10 is extremely important. I would like to give you a good
11 example of what actually happens, because I've had, as
12 you might know, some experience in the lower Court. I
13 think it is one of the more serious problems in the People's
14 Court, which is even if the various litigants can remove
15 their cases to, for example, in Baltimore City, it is not
16 a question of a jury, but it's a question of removal.

17 You can get a trial de novo, as you know, now
18 for a simple matter of \$2. You can get a discovery for \$2,
19 and you can remove it and get a completely new trial.

20 If the monetary amount of removal is raised, it
21 might be also an additional deterrent, because if you

1 look at the cases, and there are close to maybe a couple
2 of hundred thousand cases a year in Baltimore City, I would
3 say seventy-five per cent of them are \$500 or less. Of
4 course, at that time the jurisdiction was \$1000 and now it
5 is 2500, but I think the large bulk of the cases are below
6 \$500. Particularly in the lower Courts, you have furniture
7 salesmen and installment salesmen predominately in the lower
8 Courts. These are the type cases you get. As to the pure
9 contract cases, and so forth, you very rarely get those.

10 If this were 500, I think there might be an
11 argument that the legislature can virtually remove the
12 right of jury trial by raising or lowering the jurisdiction
13 as it sees fit, but I think perhaps it could prevail, if it
14 is reasonable. I don't know, you could probably make an
15 argument against it, but if it is at all possible to have
16 such a thing, I think it would be very helpful, particularly
17 to those lower Courts who are today being used for discovery,
18 more or less as a discovery procedure by both parties and
19 they really burden the Court with a case which is really
20 not being decided, but being prepared for some future pro-
21 ceeding.

1 THE CHAIRMAN: Mr. Miller?

2 MR. MILLER: I just want to say, from the practi-
3 cal standpoint, after rough and tumble legal experience over
4 many years and having been on the People's Court, I think
5 what both of these gentlemen said is very enlightening
6 and very true, and I would like to speak on behalf of the
7 amendment that Mr. Case offered, because I think a some-
8 what similar situation has existed in Federal law, that
9 the right of diversity, changing jurisdictions on account
10 of diversity of citizenship, and over the years it's become
11 obvious that the amount had to be raised from 3000 to, I
12 think it's 10,000 now, but I think if we leave it as sug-
13 gested in the amendment and let the legislature write the
14 limit, we won't have to have the Constitution amended if
15 we have more inflation, or something of that sort.

16 THE CHAIRMAN: Mr. Clagett?

17 MR. CLAGETT: Is it contemplated in your amend-
18 ment, Mr. Case, that the legislature could provide a \$500
19 limit for Calvert County and \$2500 for Prince Georges?

20 MR. CASE: Well, what we're doing now, the
21 legislature wouldn't be able to pass special laws like that,



1 will it? It would be a general law.

2 MR. CLAGETT: We've got it exclusively, insofar
3 as judicial matters are concerned, in the provision for
4 legislation by -- well, that is, the broad grant of powers
5 to the Counties, and this would be within that exclusive
6 area which they are excluded from. So, I don't know whether
7 it would apply.

8 MR. CASE: Well, it is contemplated that it is
9 to be uniform throughout the State.

10 MR. CLAGETT: If we get that in, I think that
11 will do it.

12 MRS. BOTHE: I would like to comment, if I may,
13 on the recommendation. If we're trying to keep the provi-
14 sion in the Constitution for traditional reasons and be-
15 cause it exists in every other State Constitution, then I
16 think Mr. Case's suggestion is a good one; but as a matter
17 of actual result, all he is saying is that the legislature
18 shall provide for where jury trials are going to occur,
19 which is what the present situation is, as I stated earlier
20 about Workmen's Compensation, where there is no constitu-
21 tional mandate, but the legislature has granted it, anyway.

1 MR. CASE: But they have done it because of the
2 constitutional provision.

3 MRS. BOTHE: No, they have not.

4 MR. CASE: Of course, they have.

5 MRS. BOTHE: The Court of Appeals held that the
6 administrative procedure did not entitle a litigant under
7 the Workmen's Compensation Act to a jury trial, as a matter
8 of right. He could have it by statute. He has it by
9 statute. Now, you are saying that everybody gets it by
10 statute, but it is in the Constitution.

11 MR. CASE: Mrs. Bothe --

12 THE CHAIRMAN: Mr. Case, the record won't be
13 complete this way. Go ahead, Mrs. Bothe.

14 MRS. BOTHE: I completed my sentence, but what it
15 amounts to is that the legislature determines who gets a
16 jury trial in a civil proceeding, but the Constitution en-
17 courages the legislature to place some basis upon it.

18 MR. CASE: With all due respect you are just
19 absolutely wrong about that, because a litigant in a
20 Workmen's Compensation case has his choice. He can sue at
21 common law, he can go into the Court -- surely, he can.

1 MR. GENTRY: He cannot.

2 MR. CASE: Yes, he can.

3 THE CHAIRMAN: One person has the floor at a
4 time, please. You will have a chance.

5 MR. CASE: He has the common law action, if he
6 wants to exercise it, but he gives up his rights under the
7 Workmen's Compensation law; that is what you're thinking
8 of. He cannot have it both ways.

9 THE CHAIRMAN: Mr. Gentry?

10 MR. GENTRY: In elaborating a little further
11 on what Mrs. Bothe says, certainly, the main basis for
12 a provision such as this, which we have inherited from
13 days gone by, is to give the people this right to a judg-
14 ment from their peers. When I spoke before, I said I
15 originally thought we ought to delete it, and that is what
16 we are coming back to when you talk about this amendment.
17 This amendment takes the entire heart and meaning out of
18 it. I would readily grant it gives a very practical
19 effect to it and it holds and preserves this exclusive
20 jurisdiction in the lower Courts, but by doing so, you
21 might just as well delete it, because it is of no value

1 here at all, as to the right such as we're talking about,
2 putting it in the Declaration of Rights. It is not a
3 right of the people to be judged. The legislature is going
4 to tell them what their rights are with regard to the
5 setting of the amounts.

6 THE CHAIRMAN: Mr. Sayre?

7 MR. SAYRE: I just would like to ask how important
8 is it to have this right without a dollar amount, keeping
9 what Mr. Gentry just said? How important is that?

10 THE CHAIRMAN: Is this a rhetorical question or
11 are you asking --

12 MR. SAYRE: I'm asking if this is a right that
13 we really ought to preserve, then I would be for it, but
14 I don't know. Is it a right that we need?

15 THE CHAIRMAN: I again ask, are you addressing
16 the question to someone?

17 MR. SAYRE: Well, I guess to the attorneys and
18 judges in the room.

19 MRS. BOTHE: I have expressed my views.

20 MR. SAYRE: In the case of Judge Hargrove, you
21 are deluged, is that what you are saying?

1 MR. HARGROVE: No, I don't think in the People's
2 Court the question of a jury trial is a problem at all. I
3 think the question of removing it is more of a problem
4 because I would say a large percentage of the cases that
5 are removed from the People's Court are not really tried
6 by jury. They go to the Baltimore City Court and still have
7 it tried by a judge, and a large number of them. Very few
8 of them are tried by jury.

9 THE CHAIRMAN: Although I am not a coffee drinker,
10 let me interrupt here and say that if we delay much longer,
11 the coffee will get cold. So, let us recess for lunch.

12 (At this point there was a luncheon recess.)
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1 THE CHAIPMAN: Let's resume if we can, and I
2 want to keep the pressure on you a little bit for the rest
3 of the afternoon because a number of you have indicated
4 to me that it is either very difficult or, in some in-
5 stances, impossible for you to be here this evening,
6 therefore, I would like to not cut off debate at all but
7 just ask that we move briskly.

8 The question is before you on the motion to
9 amend the Committee's recommended provision with respect
10 to trial by jury in civil proceedings on page 13 of the
11 report. Dr. Bard.

12 DR. BARD: I would like to ask Mr. Case whether
13 he would object to having the statement as amended in
14 Article IV dealing with the judiciary rather than in the
15 Declaration of Rights. I think the amendment, as I see
16 it now, would not be qualified for the Declaration of
17 Rights which is concerned primarily with inherent rights.

18 THE CHAIRMAN: I don't think Mr. Case's motion
19 went to its position and I would rather leave that to the
20 Committee on Style.

21 DR. BARD: All right. Therefore the sentence



1 below the Committee's recommendation would not neces-
2 sarily hold in terms of the motion?

3 THE CHAIRMAN: That's correct.

4 DR. BARD: All right.

5 MRS. BOTHE: Mr. Chairman.

6 THE CHAIPMAN: Mrs. Bothe.

7 MRS. BOTHE: I would point out that leaving
8 such a matter to the Committee on Style points up the
9 objection to the amendment in the first place because it
10 would simply be an excoriatory kind of a sentiment if
11 enacted with the amendment, and as such, to put it in the
12 judiciary or some other part of the Constitution would be
13 foolish, yet it is an inconsistent statement for the
14 Declaration of Rights. I think that's one reason that it
15 ought to be defeated.

16 THE CHAIRMAN: Any further discussion? Mr.
17 Mindel.

18 MR. MINDEL: Mr. Chairman, I asked Mrs. Bothe
19 at the lunch hour how we reconciled this Article with the
20 one in the Federal Constitution which provides for jury
21 trial in cases exceeding \$20, Article VII.



1 MR. SAYRE: That's civil, you are talking
2 about the Federal Constitution.

3 MR. MINDEL: Federal Constitution, whether it
4 has any bearing on this or not.

5 THE CHAIRMAN: Do you have any statement, Mrs.
6 Bothe?

7 MRS. BOTHE: Well, I will read Article VII of
8 the United States Constitution. It says, In Suits at
9 Common Law where the value in controversy shall exceed
10 twenty dollars, the right of trial by jury shall be pre-
11 served, and no fact tried by a jury shall be otherwise
12 re-examined in any Court of the United States, than
13 according to the rules of the Common Law.

14 Now, frankly, the Committee did not research
15 the possibility that this Federal provision was one which
16 was accorded to the citizens of the States as the Four-
17 teenth Amendment grants certain other rights. I don't
18 believe it does, and the language of Article VII would
19 indicate that the discussion relates to the Courts of the
20 United States and not the State Courts. Of course, our
21 proposal or our discussion is only as applied to the Courts

The first part of the book is devoted to a general introduction to the subject of the history of the English language. It deals with the various stages of the language from its earliest forms to the present day.

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1 of the State.

2 MR. MILLER: Mr. Chairman.

3 THE CHAIRMAN: Mr. Miller.

4 MR. MILLER: Would this not, by implication,
5 certainly seem to have been decided over the years? For
6 many many years the diversification of citizenship cases,
7 which I happened to talk about before, was limited to
8 \$3,000. Now, I don't think that that Law would have --
9 and I believe it is now 10 -- but I don't think it could
10 have lasted throughout the years if there had been a
11 Federal Constitutional question about it.

12 According to a narrow interpretation there, you
13 could go into the Federal Court with a \$50 claim and de-
14 mand a jury trial and certainly it has never been done
15 that I have heard of.

16 MR. MINDEL: Congressman, doesn't the \$10,000
17 provision provide to the jurisdiction of the Federal
18 Court only and the diversification and jurisdiction, not
19 so much to a jury trial?

20 MR. MILLER: Well, it is nothing about a jury
21 trial, but the only way you can take a case out of the



1 State Court is for various and sundry reasons, and one
2 of them is diversity of citizenship.

3 MRS. BOTHE: I would say Article VII means only
4 if there is jurisdiction that the right to jury trial
5 accrues if the case is worth more than \$20.

6 MR. MILLER: Of course, if you go into the
7 Federal Court, or through diversity of citizenship or any-
8 thing else, you do have a right to jury trial automatical-
9 ly if it is a law case.

10 THE CHAIRMAN: If it is a case in a Court of
11 the United States, then the Constitutional provisions
12 respecting it apply.

13 Just so that the record will be clear, when you
14 referred to Article VII, it is in the red book as Article
15 VII, it is the Seventh Amendment to the Constitution of
16 the United States. Any further discussion? Mr. Sayre.

17 MR. SAYRE: I guess this is a rhetorical ques-
18 tion. I would like to address it to Judge Hargrove and
19 then to Mr. Case, as to why this should be a Constitutional
20 matter, rather than statutory?

21 THE CHAIRMAN: Why what should be a Consti-



1 tutional matter, a guarantee of jury trial?

2 MR. SAYRE: A guarantee of jury trial in civil
3 proceedings.

4 THE CHAIRMAN: Judge Hargrove, do you want to
5 comment?

6 MR. HARGROVE: Well, except I don't know that
7 it has to be a Constitutional question, except that it
8 has been in the Constitution from its inception. I sup-
9 pose you could take it out, and I suppose the practice
10 has grown such that you do not have a jury trial today
11 in the civil cases as we know them. Now, if you could
12 possibly get it through the Convention and approved by
13 the voters, I think within a matter of a year you would
14 probably have the hue and cry for an amendment for a jury
15 trial. I don't think you have to have it, but I think
16 it is almost a necessity whether we like it or not.

17 THE CHAIRMAN: Mr. Case, do you want to comment?

18 MR. CASE: Well, I think anything I say would
19 just be follow-up to what Judge Hargrove said. The
20 State Bar Association, in dealing with this subject,
21 felt that it was a matter of tradition which had been in

1 the Constitution, in the Federal Constitution, and that
2 the people would not understand a complete reversal of
3 this, although the State Bar Association very strongly
4 wanted, as I say, the liberalization of it, to preserve
5 the integrity of the District Courts.

6 MR. MARTINEAU: Mr. Chairman.

7 THE CHAIRMAN: Mr. Martineau.

8 MR. MARTINEAU: I would just like to support
9 Mr. Case's amendment. I think the proposal, as amended,
10 is the best compromise between what is really the most
11 theoretically desirable thing and what is the practical,
12 obtainable thing, and I think that the proposal, as it is
13 made by the Committee, is much too narrow, and I think
14 you would soon have a Constitutional amendment proposed
15 to eliminate some matters from jury trial, and I think the
16 way to handle it is through the Legislature, and I don't
17 think we would have to worry about the Legislature rais-
18 ing the minimum to some ridiculous amount of one hundred
19 or two hundred thousand dollars, merely to get rid of the
20 jury trial. It is not going to be done and I don't think
21 we really have to concern ourselves with that, so I would



1 support the amendment made by Mr. Case.

2 MR. HAILE: Mr. Chairman.

3 THE CHAIRMAN: Mr. Haile.

4 MR. HAILE: This amendment which has been offer-
5 ed seems to require some action by the Legislature. In
6 the absence of such action by the Legislature, then we
7 have no right to trial by jury, so I would suggest that
8 it be reworded in some fashion, so that even though the
9 Legislature doesn't act in fixing a minimum, that the
10 guarantee of a right to jury trial be preserved in our
11 Constitution.

12 MRS. BOTHE: Mr. Chairman.

13 THE CHAIRMAN: Mrs. Bothe.

14 MRS. BOTHE: I was going to bring the Chairman's
15 language to the attention of the Commission.

16 After we recessed, Mr. Eney jotted down some
17 language which I think the proposer of the amendment and
18 the Committee would find more agreeable. I don't know
19 if it meets Mr. Haile's --

20 THE CHAIRMAN: Well, read it.

21 MRS. BOTHE: -- comment. It probably doesn't,

1 but it reads as follows, Every person shall have the right
2 of trial by jury of issues of fact in civil proceedings
3 at law in the Courts of the State in which the amount
4 of the value in controversy exceeds such minimum as may
5 be fixed by Law. Now, the may be in there I assume would
6 mean if the Law fixed no minimum everyone would have an
7 untrammelable right to a jury trial.

8 MR. HAILE: I was going to suggest if it ex-
9 ceeds \$10 or such other minimum as may be provided by
10 Law. \$10 is in there.

11 THE CHAIRMAN: I personally don't think it would
12 add very much. Let me find out first, as a matter of
13 procedure, Mr. Case, would you be willing to accept the
14 language read as an amendment to your motion?

15 MR. CASE: I have no objection to it. It is the
16 thought that I would like to get in.

17 THE CHAIRMAN: Yes. Well, the purpose of the
18 amendment was to get away from the requirement of affirma-
19 tive action that seemed implicit in your language, and in-
20 stead have the Legislature only fix the minimum, and,
21 secondly, to use the words, Or value, as well as amount



1 because replevin or ejectment or other proceedings might
2 not have dollar amounts.

3 There were several people that seconded the
4 original motion. Do they accept the amendment?

5 MR. MILLER: I spoke in favor of it and I am
6 perfectly satisfied with that language.

7 THE CHAIRMAN: Mr. Haile, do you feel strongly
8 about inserting the added language?

9 MR. HAILE: No indeed, I just thought it clari-
10 fied it, made it certain.

11 THE CHAIRMAN: Well, the motion as amended then
12 would be to rephrase the section as recommended by the
13 Committee and appearing on page 13, to read as follows:
14 Every person shall have the right of trial by jury of
15 issues of fact in civil proceedings at law in the Courts
16 of this State in which the amount or value in controversy
17 exceeds such minimum as may be fixed by Law. Any further
18 discussion?

19 I want to ask a question just to get it in the
20 record, really, two questions. I take it that this pro-
21 vision does not require a jury of twelve or any other pre-



1 scribed number, is that correct?

2 MRS. BOTHE: I have seen cases, not in connect-
3 ion with our research here, that hold that there is no
4 necessity for a jury of twelve, and a number of States
5 provide for smaller sizes.

6 THE CHAIRMAN: And, secondly, this provision,
7 unlike the corresponding provision in the Declaration
8 of Rights with respect to criminal trials, does not require
9 a unanimous verdict, so that the adoption of this pro-
10 vision would leave it to the Legislature to provide in
11 some or all cases for a jury of other than twelve and pro-
12 vide for a majority or some other proportionate vote,
13 other than a unanimous vote.

14 MRS. BOTHE: Mr. Chairman, I would flag that.
15 Speaking off the top of my head, because the Committee
16 certainly didn't go into it, but I don't think it is a
17 matter of absolute record that the Legislature would be
18 able to prescribe less than a majority because under that
19 philosophy they might prescribe a minority.

20 THE CHAIRMAN: Not less than a majority, less
21 than unanimous. I point out to you the only reason for



1 the comment is that the corresponding provision with
2 respect to the criminal proceedings specifically says
3 unanimous and you are not making such a recommendation--

4 MRS. BOTHE: No.

5 THE CHAIRMAN: -- as to the civil proceedings.

6 MRS. BOTHE: But whether or not that means the
7 Legislature could prescribe something less, I don't think
8 we are prepared to answer that.

9 THE CHAIRMAN: All right. Any further dis-
10 cussion? Are you ready for the question?

11 The question arises on the motion to rephrase
12 this section or article in the manner just indicated, as
13 I read to you.

14 All those in favor signify by a show of hands.
15 Contrary.

16 The motion carries fifteen to one.

17 Now, any further comment on this section? Dr.
18 Bard.

19 DR. BARD: I raised the question earlier but
20 you answered it.

21 THE CHAIRMAN: All right. Then let's move to



1 Article XV, Section 10 on page 13.

2 MRS. BOTHE: This section provides how officers
3 may qualify and where the executed oath is to be filed.

4 The Committee was again of the opinion that
5 this was a matter for statute or administrative procedure
6 and didn't belong in the Constitution, and we recommended
7 the subject matter not be included in the new Constitution.

8 THE CHAIRMAN: Any questions? Comments? If
9 not, we will move to a consideration of the Seventh Re-
10 port of the Committee on Miscellaneous Provisions.

11 This is a report dated November 21, 1966. Mrs.
12 Bothe.

13 MRS. BOTHE: The Seventh Report of the Committee
14 on Miscellaneous Provisions deals with the subject of
15 Constitutional revision.

16 I would think it unnecessary to go into any great
17 detail with this group as to the present provisions in
18 the Constitution relating to the subject as a result of
19 an abortive, a number of abortive efforts to use it.

20 The provisions are contained in Article XIV,
21 two sections, one dealing with Constitutional Amendments,



1 the other with Constitutional Conventions.

2 Section 1 provides that an amendment shall be
3 initiated by the General Assembly by a vote of three-
4 fifths, and then goes on to indicate the necessity for
5 publication and placing the issue on the ballot.

6 Section 2, to many people appeared to call for
7 the regular holding of Constitutional Conventions if
8 the will of the people to be taken at twenty-year inter-
9 vals so indicated, but as we are all much aware this has
10 not been the case.

11 The will of the people has been construed by
12 the Courts to mean the majority, by the majority of those
13 eligible to vote, rather than the majority of those vot-
14 ing, and it is a near impossibility to secure such a
15 majority, with the result that the section has never
16 resulted in the calling of a Constitutional Convention
17 in Maryland.

18 The Committee has proposed that the entire --
19 that the provisions of Sections 1 and 2 be completely re-
20 written as follows, and I think perhaps, Mr. Chairman,
21 I should take it up section by section.

1 THE CHAIRMAN: Yes, I think we had better.

2 MRS. BOTHE: Proposed Section 1, Amendments
3 to this Constitution may be proposed either by an affirma-
4 tive record vote of three-fifths of the members of each
5 House of the General Assembly or by a majority vote of
6 a Constitutional Convention called by the General As-
7 sembly. In either case, the amendments so proposed shall
8 be submitted to a popular vote, and unless they otherwise
9 provide, shall become effective thirty days after approval
10 by a majority vote of those voting thereon at any special
11 or general election, as determined by the General Assembly.
12 Such popular vote shall be preceded by due notice there-
13 of, as provided by Law.

14 THE CHAIRMAN: Any questions as to this section?
15 Any comment?

16 DR. JENKINS: Mr. Chairman.

17 MR. CHAIRMAN: Dr. Jenkins.

18 DR. JENKINS: This is a legal question, I sup-
19 pose. It is conceivable that an amendment -- my question
20 is about the thirty-day limit -- it is conceivable that
21 an amendment may require certain other legislative adjust-

1 ments which may require more than thirty days, such as
2 the reorganization of the judiciary, or may require
3 supporting legislation. I simply raise this question with-
4 out sponsoring this, whether it be desirable, or/^{some}time
5 as otherwise provided in the amendment.

6 THE CHAIRMAN: That is in there, Unless they
7 otherwise provide. The amendments so proposed shall be
8 submitted to a popular vote, and unless they otherwise
9 provide, meaning the amendments --

10 DR. JENKINS: That says, They otherwise provide,
11 shall become effective.

12 THE CHAIRMAN: Yes.

13 DR. JENKINS: Well, a college president can't
14 read very well.

15 MR. SAYRE: Mr. Chairman.

16 THE CHAIRMAN: Mr. Sayre.

17 MR. SAYRE: I may be joining you. Can you have
18 a majority vote of a Constitutional Convention? It has
19 to be of members of a Constitutional Convention, doesn't
20 it?

21 MRS. BOTHE: Ask Dr. Burdette.

1 THE CHAIRMAN: I think that would be a question
2 for the Style Committee.

3 MR. SAYRE: Okay. As I take it, when we have a
4 Constitutional Convention, we are talking about an abso-
5 lute majority of those being required here, is that cor-
6 rect?

7 THE CHAIRMAN: I take it that's the concept of
8 the Committee. It is a majority of the members, not a
9 majority of those present.

10 MRS. BOTHE: Yes.

11 THE CHAIRMAN: Any further questions? Mr.
12 Martineau.

13 MR. MARTINEAU: Are these merely informative
14 questions or can we --

15 THE CHAIRMAN: Let's get the questions first,
16 then if there is a motion we will take it up.

17 MR. MARTINEAU: One problem I have with this
18 is it is phrased in terms of giving the power to amend
19 the Constitution to both the General Assembly and the
20 Constitutional Conventions, and there is no distinction
21 drawn between the power to adopt amendments and the power

1 to make complete revisions.

2 My concept has always been that the General
3 Assembly or the Legislature had the right to amend the
4 Constitution but not the right to make a complete re-
5 vision of the Constitution and submit it to the voters,
6 and it seems to me there ought to be a distinction here
7 that only a Constitutional Convention could propose a
8 complete revision of the Constitution.

9 THE CHAIRMAN: A difficulty with that, that
10 you find referred to in the writings, is that where to
11 draw the line between what is an amendment and what is
12 a complete revision, and it becomes practically impossible,
13 so that you could have an amendment that would change
14 95 per cent of the Constitution and still be an amendment.

15 MR. MARTINEAU: Well, you could, except I don't
16 think the Court would say that it would. I would think
17 that a Legislature would not do that because of the fear
18 that if you do draw a -- if the Constitution draws a
19 distinction, that distinction must mean something and the
20 Court is going to try to draw a line between what is an
21 amendment and what is a complete revision.

1 As it is phrased here, it is perfectly proper
2 for the Legislature to make a complete revision of the
3 Constitution and to submit it to the voters, and I would
4 be opposed to that.

5 THE CHAIRMAN: Mrs. Bothe.

6 MRS. BOTHE: We discussed this, Bob. We don't
7 regard it this way.

8 In the first place, the section deals with
9 amendments, not with provisions. In the second place,
10 we feel, as a practical matter, it would be literally
11 impossible for the Legislature to completely revise the
12 Constitution through this source. They would have to
13 publish each proposal. They would have to subject the
14 new Constitution to piecemeal approval of the voters and--

15 MR. MARTINEAU: I don't see why they would.
16 They would propose the entire Constitution as one amend-
17 ment.

18 MRS. BOTHE: Are you speaking now of our failure
19 to specify particularly how the amendments are to be
20 publicized and broken down?

21 MR. MINDEL: No.

1 MR. MARTINEAU: No, no, no. I am talking
2 about --

3 THE CHAIRMAN: Well, I don't think it is going
4 to be very clear in the record what is being talked about.
5 First off, this section deals with amendments, that's
6 the answer to your specific question.

7 MR. MARTINEAU: Well, it may, but I don't think
8 there is another section, unless I am mistaken, dealing --

9 THE CHAIRMAN: The next section deals, is in-
10 tended to deal with the rewriting of the Constitution,
11 the next section.

12 MR. MARTINEAU: You mean Section 2?

13 MR. HARGROVE: Yes.

14 THE CHAIRMAN: That's correct.

15 MR. MARTINEAU: Well, I would have thought, just
16 upon reading this, that the Section 2 only relates to
17 how a Constitutional Convention referred to in Section 1
18 is obtained.

19 MR. SAYRE: I don't think that's clear.

20 DR. BARD: Mr. Chairman.

21 THE CHAIRMAN: Dr. Bard.

1 MR. BARD: What I like about Section 1 that
2 isn't present in the present Section 1 is that it makes
3 it very clear that you can have a Constitutional Con-
4 vention that is concerned with a so-called limited Con-
5 stitutional revision, not necessarily a total Constitu-
6 tional revision, and many States do have limited Con-
7 stitutional revisions by Constitutional Conventions.

8 MR. MARTINEAU: I don't think this section --

9 THE CHAIRMAN: That is the only way New Hamp-
10 shire operates.

11 MR. MARTINEAU: I don't think Section 1 implies
12 that at all. Section 1 --

13 THE CHAIRMAN: We are getting into a debate
14 that won't mean anything unless there is a motion. Would
15 you make a motion?

16 MR. MARTINEAU: I would move that appropriate
17 language be placed in Sections 1 and 2 here which would
18 provide that the Legislature may only propose specific
19 amendments to the Constitution and that only a Constitu-
20 tional Convention can propose a complete revision of the
21 Constitution.

1 THE CHAIRMAN: Is there a second?

2 MR. SAYRE: Seconded.

3 THE CHAIRMAN: Now, do you want to discuss it,
4 Mr. Martineau?

5 MR. MARTINEAU: No, I think I have made my dis-
6 cussion.

7 THE CHAIRMAN: Any further comment? Mr. Gentry.

8 MR. GENTRY: I will discuss it to the extent
9 I think we already have that. Certainly, Section 1 re-
10 lates to amendments. It is true that you run the risk
11 of an amendment that would change 95 per cent, but I don't
12 see any way around to use fine language to prevent that,
13 other than the supervision that the Court might give,
14 to say that a completely new Constitution by the -- written
15 by the General Assembly in that fashion and under the
16 guise of an amendment just wouldn't hold up. That's the
17 check you would have to hope that the Courts would exer-
18 cise, but certainly only Section 1 which gives the initia-
19 tive to the General Assembly only relates to amendments,
20 and not until you get the Constitutional Convention in
21 Section 2 do we talk about a changed Constitution.

1 THE CHAIRMAN: Dr. Michener.

2 DR. MICHENER: I just want to comment that even
3 if the Legislature were to propose a whole new Consti-
4 tution, it has to be approved, and if the voters are in
5 favor of it, what is wrong?

6 THE CHAIRMAN: Any further discussion? It
7 seems to me it would be utterly impossible to accomplish
8 this change, and if it were possible, it would be unwise.

9 Pennsylvania has submitted a revision of its
10 Constitution in the form of a series of amendments, so
11 that the voters could accept or reject different parts.

12 I don't see how you would possibly phrase lan-
13 guage that would give you any definition at all of what
14 constitutes an amendment that is an amendment or a series
15 of amendments that is something less than a revision,
16 and what is a revision, but in addition to the reason
17 that Dr. Michener pointed out, it seems to me it is really
18 immaterial. I see no reason why this amendment, whether
19 it amounts to as much as a revision or not, could not be
20 proposed either by the Legislature or by Convention. Do
21 you want to close, Mr. Martineau?

1 MR. MARTINEAU: My only comment would be, I
2 think this, the very action of this Commission in its
3 recommendation that the rewording of the Constitution
4 that we thought was necessary had to be done by a Con-
5 vention and could not be done by a Legislature drafting
6 specific amendments supports my proposal.

7 Further, I don't think that anyone thinks that
8 a Legislature meeting for a limited period during the
9 course of the year has the capability or the disinterested-
10 ness to draft a complete revision of a Constitution.

11 I don't think really, as a matter of procedure,
12 that in any State that the revision procedure is follow-
13 ed to any great extent by having the Legislature propose
14 revisions. I think the only intelligent way is to do it
15 through a Convention, and all I am really suggesting is
16 that the language here read that amendments may be proposed
17 by the General Assembly, and amendments or complete re-
18 vision of the Constitution be proposed by a Constitutional
19 Convention which I think is the way we all feel is the
20 way to either amend or completely revise the Constitution.

21 THE CHAIRMAN: Any further discussion? Mr.

1 Sayre.

2 MR. SAYRE: I don't know if this clarifies it.
3 My only concern on that point would be amendments or re-
4 vision. I don't think we should restrict whether we should
5 revise by amendment or not. Would that add anything in
6 terms of the Committee or not?

7 THE CHAIRMAN: I wouldn't think so, from the
8 Committee's previous comment.

9 Are you ready for the question? The question
10 arises on the motion to amend Section -- proposed Sections
11 1 and 2 with appropriate language to limit the right of
12 the Legislature to propose amendments which do not amount
13 to complete revision and to authorize conventions to
14 amend or revise. A vote Aye is a vote in favor of the
15 proposed change.

16 All those in favor, please signify by a show
17 of hands. Contrary. The motion loses one to sixteen.

18 MR. GENTRY: Mr. Eney.

19 THE CHAIRMAN: Mr. Gentry.

20 MR. GENTRY: A thought just occurred to me that
21 a record of this vote will show something, that we dis-

1 approved something that we want. Frankly, I voted
2 against this because we already had it.

3 THE CHAIRMAN: I don't think the record shows
4 it was disapproved at all. I think the thing disapproved
5 is the addition of the language proposed.

6 MR. GENTRY: So long as it is understood the
7 reason for those voting against it was the language
8 wasn't necessary because it was already there.

9 THE CHAIRMAN: Well, I don't know that that is
10 the reason that everybody had.

11 MR. GENTRY: All right.

12 THE CHAIRMAN: Let the record speak for itself.
13 Any further comment, question or motion with Section 1?

14 MRS. BOTHE: Mr. Chairman.

15 THE CHAIRMAN: Mrs. Bothe.

16 MRS. BOTHE: I have been sitting here debating
17 whether to raise the issue. I think we ought to have a
18 record on the matter, if nobody else raises it.

19 This Committee had considerable discussion on
20 the subject of whether amendments should be initiabile by
21 the people. As you can see, we recommended against it

1 and left it to the General Assembly alone, for the initia-
2 tion of amendments to the Constitution. We rejected it
3 because we felt that it was unnecessary and that it had
4 perhaps been abused in the thirteen States where it does
5 exist. The model recommends it, and today I got some
6 research from one of the people on the staff.

7 We asked them to tell us what the results had
8 been in the thirteen States where amendments could be
9 initiated, and I received a tabulation today which I have
10 only had an opportunity to skim through.

11 I think we ought to make it a part of our re-
12 port that it indicates that the use of the initiative has
13 not been very widespread and that in many instances it
14 has been used to propose rather absurd matters, such as
15 whether to legalize bingo, and Mr. Della will be interest-
16 ed to know it has been used a number of times relative
17 to right-to-work laws successfully.

18 THE CHAIRMAN: Is there any comment or question?
19 Dr. Bard.

20 DR. BARD: Just a brief one and that is, I would
21 like it clarified for the record that we are referring



1 here to the Constitutional initiative, not the initiative
2 in the broader sense.

3 THE CHAIRMAN: You mean the initiative to put
4 Constitutional amendments on the ballot?

5 DR. BARD: Right.

6 THE CHAIRMAN: Dr. Michener.

7 DR. MICHENER: Just a little light note on this.
8 When I was in California, there was a Constitutional
9 initiative which was adopted saying that Mrs. Williams
10 would be the Director of the Department of Social Welfare.
11 It took a Constitutional amendment to get her out of office.

12 THE CHAIRMAN: Any further discussion of this
13 question? If not, we move to Section 2.

14 MRS. BOTHE: Now, Section 2 deals with the
15 calling of Constitutional Conventions and as proposed it
16 reads, The General Assembly, by an affirmative record vote
17 of three-fifths of the members, may at any time submit to
18 the voters the question of the calling of a Constitutional
19 Convention. If the question of calling a convention shall
20 not have been submitted to a popular vote for a period of
21 twenty years, then it shall be submitted at the next general

1 election. In either case, a Convention shall be held
2 within one year of the date of approval by a majority of
3 the voters voting thereon. Within sixty days of such
4 popular approval, the Governor shall appoint a Commis-
5 sion to prepare proposals to lay before the Convention.
6 At its next session following such vote, the General
7 Assembly shall provide for the assembling of the Convent-
8 ion, and the selection of its delegates. The Convention
9 shall provide its own rules of procedure. Any proposals
10 for changing the Constitution adopted by the Convention
11 shall be submitted to the qualified voters of the State
12 for ratification, and shall be effective only after
13 approval by a majority of those voting thereon.

14 As you can see, we tried to avoid a number of
15 the pitfalls of the present Constitutional provision. We
16 have eliminated the provision that the majority of those
17 eligible to vote be required. We have called for a --
18 that the issue be placed on the ballot at least once
19 every twenty years, and we have perpetuated a group such
20 as ours into the Constitution itself and made mandatory
21 the provision for a Convention when the voters approve of

1 one being held.

2 THE CHAIRMAN: Dr. Burdette.

3 DR. BURDETTE: I wonder, Mr. Chairman, if I
4 could get an interpretation or so about the language
5 for the guidance, perhaps, of the Committee on Style
6 and also now the intent of the Committee of what we are
7 approving..

8 I should presume that the Committee would be
9 willing to accept on page 3 in the beginning, it is
10 actually the second new sentence, In either case a Con-
11 vention shall be held, that language preceding that
12 should carry in the arrangement that if the people approve
13 it. It literally says if you have a vote you shall also
14 have a Convention, and I presume you mean that's the
15 case if the popular vote is affirmative.

16 MRS. BOTHE: Well, it reads as I read it, in
17 either case a Convention shall be held within one year
18 of the date of approval.

19 DR. BURDETTE: I beg your pardon, approval, oh,
20 I beg your pardon, yes, you are quite right, but under
21 the next one, does this Committee feel strongly -- well,

1 this is not a matter for style, but let me ask all
2 three questions. Within sixty days of such popular ap-
3 proval, the Governor shall appoint a Commission to pre-
4 pare proposals to lay before the Convention. I will
5 give my own reaction to that as one that -- well, I guess
6 I feel so strongly that people ought not to be the judges
7 in their own cause, I am a little embarrassed to neces-
8 sarily say this is a good idea. If the next Constitu-
9 tional Convention thinks that we have been of service to
10 them and such tremendous service that it would be desir-
11 able to have such a Commission, it might go in, but if
12 they think we were really pestiferous, then we have really
13 put in language that is of self-service.

14 MRS. BOTHE: Dr. Burdette, this wasn't our idea,
15 however, the model preceded both the Commission and our
16 inspiration.

17 DR. BURDETTE: This has in it certainly inflexi-
18 bility.

19 Then going to the third one, At its next session
20 following such vote, the General Assembly shall provide
21 for the assembling of the Convention, and the selection

1 of its delegates. Now, I would read that to permit that,
2 the General Assembly does not have to have an election
3 of delegates but could provide that the Governor appoint
4 them. Is that the intent of the Committee?

5 MRS. BOTHE: Yes, well, the intent is to allow
6 the General Assembly, as the General Assembly will be
7 doing in its next session this time, to make provisions.
8 The real purpose of it is to compel the General Assembly
9 to construct the Convention, to provide the funds, to
10 provide the means of election and not to face the possi-
11 bility that it would ignore the mandate of the voters
12 and simply not structure that which --

13 DR. BURDETTE: But this is, if you will pardon
14 me, a very large question of policy, it seems to me,
15 because if you are saying then that the Legislature
16 could by Law provide another means of appointing it,
17 this could open a situation wherein the Legislature could,
18 in effect, defeat the will of the people, if you don't
19 have some kind of popular representation in the election
20 of the delegates.

21 MRS. BOTHE: Well, it is probably a policy

1 question. We discussed it. We used the word selection
2 rather than election deliberately because we felt there
3 should be a wide area of flexibility for the Legislature
4 that would determine how delegates to the Convention were
5 selected. We weren't certain that it would necessarily
6 be advisable to always have popularly elected delegates.

7 DR. MICHENER: Mr. Chairman.

8 THE CHAIRMAN: Dr. Michener.

9 DR. MICHENER: I wonder if this actually secures
10 what you are after in saying that it forces the Legisla-
11 ture to provide for the Convention? I can see in the
12 future, if the issue were a unicameral Legislature and
13 the Legislature itself didn't want it, they just refused
14 to take action as happened in the past. Are you con-
15 templating that this will be judicially enforceable.
16 It doesn't say so, or the Governor, if they don't, the
17 Governor could act for some means of Convention? As I
18 read it now, it would be an obligation on the General
19 Assembly but if they refused to honor it, I don't see what
20 you would do about it.

21 MRS. BOTHE: You would do the same thing as you

1 do in any instance --

2 DR. BURDETTE: The Court says you have a politi-
3 cal remedy by electing somebody else next time.

4 THE CHAIRMAN: The direct answer to your ques-
5 tion is, there is no provision specifically providing
6 for Court enforcement, is that correct?

7 MRS. BOTHE: That's correct.

8 DR. BURDETTE: Wouldn't it be desirable?

9 MRS. BOTHE: Well, of course, the Court can't
10 appropriate funds, and a mandamus against the Legisla-
11 ture written into the Constitution would be a highly
12 unconventional sort of thing.

13 THE CHAIRMAN: Mr. Martineau.

14 MR. MARTINEAU: I just wonder at the necessity
15 for including the language, the sentence, The Convention
16 shall provide its own rules of procedure. I frankly
17 would have thought that that would have been inherent.

18 MRS. BOTHE: We had some discussion on that.
19 Dr. Winslow might answer it better than I because he par-
20 ticipated in the preparation of it.

21 DR. WINSLOW: I don't think I can cite a case,

1 but there have been cases where the Legislature has
2 fixed the rules of procedure for the Convention which
3 seems highly undesirable.

4 THE CHAIRMAN: And has led to debate, as I
5 understand, as to whether this is the proper exercise
6 of legislative power.

7 JUDGE ADKINS: Mr. Chairman.

8 THE CHAIRMAN: Judge Adkins.

9 JUDGE ADKINS: Is there a motion on the floor?

10 THE CHAIRMAN: There is not.
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1 JUDGE ADKINS: I would like to make one. In
2 the final sentence, this is a very minor one, I would
3 like to move that the words, adopted by the Convention,
4 be moved up after the word, proposals, so that it is clear
5 that the sense is that any proposals adopted by the
6 Convention for changing the Constitution shall be submitted.
7 As it now reads it seems to me that only proposals adopted
8 for the purpose of changing the Constitution adopted by
9 the Convention would be subject --

10 THE CHAIRMAN: Well, in the interest of saving
11 time would the Committee accept the rearrangement?

12 MRS. BOTHE: It is certainly the intention
13 of the Committee.

14 THE CHAIRMAN: In the absence of objection,
15 the phrase, adopted by the Convention, in the last sentence,
16 is inserted after the words, any proposals. There is no
17 objection, the change is made.

18 Now, Judge Adkins, you said you had another one?

19 JUDGE ADKINS: That's all.

20 DR. BARD: Mr. Chairman.

21 THE CHAIRMAN: Dr. Bard.

1 DR. BARD: I have another one along the same
2 lines and that is the ninth line, page 3, voting thereon,
3 as written seems to refer to general election. I am sure
4 the Committee meant majority of the voters voting upon
5 this specific subject. Now, perhaps that needs some
6 clarification by the Committee on Style.

7 THE CHAIRMAN: Yes, I think that's a Style
8 Committee matter, but we do need to know the intent, and
9 the intent is the majority voting on the question and not
10 voting in the election.

11 MR. MINDEL: Mr. Chairman.

12 THE CHAIRMAN: Mr. Mindel.

13 MR. MINDEL: Why did the Committee allow only
14 10 months for the work of the Convention? You talk about
15 60 days, you have the appointment of a Commission, then
16 the Convention is called 10 months later?

17 THE CHAIRMAN: Mrs. Bothe.

18 MRS. BOTHE: We felt there ought to be a time
19 limit and after some deliberation that this amount of time
20 was sufficient.

21 THE CHAIRMAN: And, obviously felt you could

1 get a Commission to work faster than this one.

2 MRS. BOTHE: Well, we may not have to wait a
3 hundred years to revise it.

4 MR. SAYRE: Mr. Chairman.

5 THE CHAIRMAN: Mr. Sayre.

6 MR. SAYRE: There is nothing that precludes
7 this type of Commission being created way in advance in
8 any event as I understand it, and I therefore do agree
9 with this.

10 The one shortcoming I feel is that you almost
11 restrict that Commission's efforts in preparing proposals.
12 I would follow the model I think to assembling information
13 because some of your proposals may be that no new amend-
14 ment be made, and you marshall information to substantiate
15 that, so I would add something like --

16 THE CHAIRMAN: Why wouldn't it be better to
17 say simply to prepare for because we have ourselves under-
18 taken to do much more than prepare proposals. As a matter
19 of fact, the more important part of our work is going to
20 be the research part of it.

21 MRS. BOTHE: I think that would be acceptable.

1 THE CHAIRMAN: To prepare for, so that you
2 would strike out the words, proposals to lay before, and
3 insert the word, for.

4 Any objection? If not, we will do that.

5 MR. GENTRY: Mr. Chairman.

6 THE CHAIRMAN: Mr. Gentry.

7 MR. GENTRY: I have a clean-up change on Page 2,
8 three-fifths of the members of each House should be in
9 there, I think.

10 THE CHAIRMAN: I would take it, and I make this
11 statement for the benefit of the Committee on Style, that
12 the first three lines of Section 2 would have to be
13 rephrased to conform to the language that you have used
14 in other cases, to make it clear that you are talking
15 about three-fifths of the elected members and you don't
16 refer to record vote, is that correct, Dr. Burdette?

17 DR. BURDETTE: I think that is right.

18 THE CHAIRMAN: Any further questions? Mr. Sayre.

19 MR. SAYRE: Did the Committee give any consid-
20 eration as to whether an amendment, the voting upon an
21 amendment would be done by three-fifths of the two Houses

1 meeting jointly?

2 MRS. BOTHE: Ask that again, would you, Bill?

3 THE CHAIRMAN: Did you give consideration to
4 a proposal that for purposes of proposing a Constitutional
5 amendment the two Houses of the Legislature had to be in
6 joint session?

7 MRS. BOTHE: No.

8 MR. SAYRE: Would this be appropriate?

9 THE CHAIRMAN: What?

10 MR. SAYRE: To submit a motion?

11 THE CHAIRMAN: Yes.

12 MR. SAYRE: I would like to move that wherever
13 we have the two Houses voting, that they will be voting
14 jointly.

15 THE CHAIRMAN: Now, are you talking about only
16 in this?

17 MR. SAYRE: In these two sections only.

18 THE CHAIRMAN: These two sections?

19 MR. SAYRE: These two sections only, yes.

20 THE CHAIRMAN: All right, is there a second?

21 The motion fails for lack of a second. Any further question

1 on Section 2? Mr. Haile.

2 MR. HAILE: I think in the fourth line it
3 reads --

4 THE CHAIRMAN: The fourth line on Page 3?

5 MR. HAILE: On Page 3, submitted to a popular
6 vote for a period of 20 years. I think we mean to say
7 for any period of 20 years because this is a perpetual
8 thing every 20 years.

9 THE CHAIRMAN: Yes, I would anticipate that
10 they were not requiring an election to continue for 20
11 years, so that would be referred to the Committee on Style.
12 Mr. Miller.

13 MR. MILLER: If, just to clarify that, if there
14 had been such a vote by -- under one of the other pro-
15 visions, would that mean you could have it on the ballot
16 for a period of any time thereafter without 20 years
17 having elapsed? It seems to me that there might be an
18 indefinite -- suppose you have a Constitutional Convention,
19 or suppose there is a vote and it turns down a Constitu-
20 tional Convention, would you have to wait, or could you
21 put it on the ballot the very next year if there hadn't

1 been a Convention then for 21 years or 24?

2 THE CHAIRMAN: I take it that the Committee
3 means the Legislature can put it on the ballot every year
4 if it wants to but it must put it on at least once every
5 20 years. Is that the intent of the Committee?

6 MRS. BOTHE: Yes.

7 MR. MILLER: If they put it on and it fails
8 they don't have to put it on for another 20 years?

9 THE CHAIRMAN: They may but do not have to.

10 MRS. BOTHE: Which for the record I might say
11 here again there was discussion on initiative of
12 Constitutional Conventions and the Committee felt that
13 in view of the 20-year provision that it would be unneces-
14 sary and probably unwise to make any initiative provision
15 for placing the question on the ballot.

16 THE CHAIRMAN: Any question as to that? If not,
17 I had one other question for the benefit of the Committee
18 on Style.

19 I note in the last sentence that you use the
20 words, changing the Constitution, whereas in the present
21 Constitution the phrase is, altering the Constitution.

1 Is there any significance to the change or is
2 this something that the Committee on Style could change?

3 MRS. BOTHE: No, we thought the word was better
4 chosen but they can change it back.

5 THE CHAIRMAN: All right, or any similar word.
6 There is no particular significance to the word you chose?

7 MRS. BOTHE: Well, we felt it best, we didn't
8 want to use the words provisions or amendments for altera-
9 tion.

10 THE CHAIRMAN: Right. Any further question as
11 to the subject of this report at all dealing with the
12 Amendment of the Constitution? If not, we will proceed
13 to a consideration of the Eighth Report of the Committee
14 on Miscellaneous Provisions. That's the one dated
15 December 3rd handed to you this morning. Mrs. Bothe.

16 MRS. BOTHE: The Eighth Report deals with
17 Article IV, Section 13, and Article XV, Section 11.
18 Starting with Article IV, Section 13, Form for Commissions
19 and Grants. It now provides that, All Public Commissions
20 and Grants shall run thus: The State of Maryland, et cetera,
21 and shall be signed by the Governor, with the Seal of the

1 State annexed; all writs and process shall run in the same
2 style, and be tested, sealed and signed, as heretofore,
3 or as may hereinafter be, provided by Law; and all indict-
4 ments shall conclude, against the peace, government and
5 dignity of the State.

6 This language is actually used as some of us
7 come upon. I understand writs actually do start out, The
8 State of Maryland, et cetera, and as those of us who
9 handle criminal cases know, all indictments still conclude,
10 against the peace, government and dignity of the State.

11 The one time the Court had occasion to construe
12 this section it was held that an indictment which did not
13 contain that magic phrase was unconstitutional and the
14 defendant presumable went free. It has never otherwise
15 been the subject of litigation.

16 The Committee's first impulse was to say that
17 this provision did not require inclusion in the Constitu-
18 tion but then we looked in the Blue Book of State Consti-
19 tutions and took note that it is almost universally
20 included in the Constitutions of other states. Whether
21 we thought so or not, it seems that the wise people around

1 the Nation feel it important to say in the Constitution
2 what the language of a writ shall contain when issued by
3 the State.

4 We did not feel it necessary to put the language
5 of indictments in the Constitution. That seems not to be
6 done with any frequency. It can be the subject of statute,
7 and I believe in Article, somewhere in Article XXVII is.

8 We therefore propose to leave in a provision
9 dealing with the subject but to modernize it and clean
10 it up, and our proposal appears on Page 3 of the Report
11 and reads, All public commissions and grants shall be
12 signed by the Governor with the Seal of the State annexed.

13 THE CHAIRMAN: Any question? Any comment?

14 MR. GENTRY: Mr. Chairman.

15 THE CHAIRMAN: Mr. Gentry.

16 MR. GENTRY: I was on the Committee and objected
17 to the phrasing, commissions and grants. While I suspected
18 the word grant means deed, I am not completely sure in my
19 own mind that that is what it does mean, and commissions,
20 if commissions cover everything from notaries public forward,
21 I don't see any real purpose in cluttering up the Executive

1 Article with a directive that the Governor must spend all
2 his time signing every commission that comes down -- comes
3 along the line.

4 I would suggest and move that this be deleted
5 completely.

6 JUDGE ADKINS: I second that motion.

7 THE CHAIRMAN: Any discussion? Mrs. Bothe?

8 MRS. BOTHE: I wouldn't oppose the motion. As
9 I said, I think our main impetus was derived from the fact
10 that 34 other states besides this one do in their Consti-
11 tutions provide some kind of form for public commissions,
12 and if the Commission, this Commission wants to be in a
13 minority I will be inclined to agree it is superfluous.

14 THE CHAIRMAN: Are you ready for the question?
15 The question arises on the motion to delete entirely the
16 proposed new section as it appears on Page 3 of the
17 Committee Report.

18 All those in favor of the motion signify by
19 saying aye. Contrary, no. The motion is carried unani-
20 mously.

21 MR. CLAGETT: Mr. Chairman, off the record for

1 a moment.

2 (Discussion off the record followed.)

3 MRS. BOTHE: Mr. Chairman, do I take it that
4 this vote is to the effect that the new -- we do not
5 recommend any provision in the new Constitution regarding
6 the form of grants, commissions or the like?

7 THE CHAIRMAN: I take it that the meaning of
8 the vote is that the recommendation of the Commission is
9 that the Constitution not contain any such provision.

10 MR. MILLER: Mr. Chairman.

11 THE CHAIRMAN: Mr. Miller.

12 MR. MILLER: Just to bring that to a head so
13 they will know for the record, and I am not going to
14 advocate the motion, but I move that we substitute a
15 provision that documents of that sort shall be as provided--
16 shall be executed as provided by law.

17 THE CHAIRMAN: Well, I would rule that that is
18 the equivalent of the motion that was just adopted, or the
19 reverse of it.

20 I think what you meant to say was that you would
21 move that the recommendation of the Commission be that there

1 be no provision in the Constitution with respect to --

2 MR. MILLER: No, that there be a provision
3 in the Constitution but that it states that the Commission
4 shall be formalized, or whatever it is, as provided by law.

5 THE CHAIRMAN: Oh, I am sorry, sir, I didn't
6 follow you.

7 MR. MILLER: Just so there wouldn't be a hiatus.
8 That is just a suggestion. I am not too much in favor of
9 it. I just think it ought to be on the record that we
10 didn't pass it by.

11 THE CHAIRMAN: Is there a second?

12 MR. CLAGETT: I will second it.

13 THE CHAIRMAN: Any discussion? Mr. Gentry.

14 MR. GENTRY: Yes, I would hope to vote against
15 it because that is unnecessary. The Legislature certainly
16 now has that power to do it with or without some sort of
17 a directive.

18 MR. MILLER: I would think so too, but I would
19 rather have it voted down and have them know we didn't
20 miss it, that's all.

21 THE CHAIRMAN: Are you ready for the question?

1 The question arises on the motion that the Commission
2 recommend a provision which would provide that all public
3 commissions and grants shall be signed in such manner as
4 shall be provided by law. All those in favor signify --

5 MR. SAYRE: I understand this will not go into
6 the Constitution?

7 MR. MILLER: It would.

8 THE CHAIRMAN: It would.

9 MR. MILLER: If you vote for it.

10 MR. HARGROVE: It would if you vote for it.

11 THE CHAIRMAN: If you vote for it. All those
12 in favor signify by saying aye. Contrary, no. The motion
13 is unanimously lost.

14 Now, Article XV, Section 11.

15 MRS. BOTHE: Perhaps we won't get through this
16 one quite as fast.

17 Article XV, Section 11 is the so-called sub-
18 versive activity section of the Constitution which was
19 enacted in 1948 in response to the feelings of the people
20 at that time.

21 It reads, No person who is a member of an

1 organization that advocates the overthrow of the Govern-
2 ment of the United States or of the State of Maryland
3 through force or violence shall be eligible to hold any
4 office, be it elective or appointive, or any other position
5 of profit or trust in the Government of or in the adminis-
6 tration of the business of this State or of any county,
7 municipality or other political subdivision of this State.

8 This Constitutional enactment was followed by
9 the so-called Ober Law which is Article 88A of the Code --
10 85A of the Code and which makes various provisions
11 implementing it so as to make certain that persons who
12 advocate the overthrow of the Government, et cetera, are
13 not in positions of trust or working for the State Govern-
14 ment in any capacity.

15 Only four other states, and I believe all of
16 them during the same period of time, have enacted similar
17 Constitutional provisions. A number of states have laws
18 similar to the Ober Law.

19 The Committee as a matter of policy as to
20 whether or not the Constitution need contain this kind of
21 prohibition feels that it is a question for the Commission

1 rather than the Committee because it is a matter more
2 of opinion some people say of a position than of Consti-
3 tutional craftsmanship.

4 The only pause that we had, or the only research
5 question that arose under it was what the effect of the
6 deletion of Article XV, which we recommend, would have
7 on Article 85A. The two were passed almost contempora-
8 neously.

9 We were not able to discover, and I don't
10 believe there is any background to the reason why it was
11 felt necessary to enact the Constitutional Amendment in
12 order to put into play a subversive activities law.

13 Apparently the feeling at the time was that
14 this was such a burning issue that it belonged in the basic
15 document of the State.

16 The only practical effect that the deletion
17 might have would be because of a possible conflict with
18 Article 37 of the present Declaration of Rights which
19 states that no other oath than the Constitutional oath
20 shall be prescribed.

21 You might recall that the oath which the

1 Miscellaneous Provisions Committee recommended to the
2 Commission and which was adopted by it also contains a
3 provision that no other oaths shall be prescribed, so
4 presumably the new Constitution would have an equivalent
5 section, would have an equivalent phrase which might
6 conceivably be in conflict with the existing Ober Act, in
7 the absence of Article XV, Section 11, or its equivalent.

8 I believe -- were copies of Lasson's paper
9 given out?

10 THE CHAIRMAN: Yes.

11 MRS. BOTHE: You have it before you. I suppose
12 it having been distributed only today --

13 THE CHAIRMAN: No, no, this was distributed
14 quite a long time ago.

15 MRS. BOTHE: I would hope then that the members
16 of the Commission have had an opportunity to look over this
17 memorandum prepared by Mr. Kenneth Lasson on the subject
18 as to whether the deletion of Article XV, Section 11 would
19 replace the oath provisions of Article 85A in conflict
20 with the Constitution.

21 The answer is not in the memorandum or anywhere

1 else. However, Mr. Lasson and I believe also Mr. Noonberg
2 as recently as yesterday consulted with the present
3 Attorney General who not only is the Attorney General,
4 but happens himself, I happen to know, to have been
5 involved in a great deal of the litigation over the Ober
6 Bill and is quite conversant with it. He was of the
7 opinion that there would be no conflict and that if the
8 contents of Section 11 were deleted from the Constitution
9 that the Ober Bill could still stand.

10 It is, incidentally, under challenge in the
11 courts right now but not on the basis of any conflict
12 with the State Constitution.

13 THE CHAIRMAN: You mean the whole Ober Act, not
14 this point?

15 MRS. BOTHE: The whole Ober Act is being tested
16 as a violation of the Federal Constitution.

17 The question of whether the affirmation or
18 statements required by the Ober Act are in conflict with
19 the Maryland Constitution was raised in a case called
20 Shub versus Simpson, is it, and there the Courts sidestepped
21 it because in that instance the plaintiff desired to file

1 for office rather than to accept an appointment to a
2 position in the State, so while it was raised in that case
3 it wasn't actually decided and never has been.

4 THE CHAIRMAN: Any questions? Mr. Case.

5 MR. CASE: Mr. Chairman, this proposal gives
6 me a lot of concern for several reasons.

7 One is, of course, we did not get the Report
8 of the Committee until this morning, at least I didn't get
9 the Report of the Committee until this morning, which
10 recommends that the provision in Article XV, Section 11
11 be deleted, and I think that a great many people will be
12 watching very carefully the action of the Commission with
13 respect to this particular item.

14 Certainly no item or issue has been debated
15 quite as much both up and down as the Ober Law and the
16 question of its desirability or its sufficiency in the last
17 decade.

18 I note that by a hasty count, and with
19 Congressman Miller leaving the room right now -- I am not
20 going to talk about you, Congressman -- I am just saying
21 you are leaving.

1 MR. MILLER: I am against communism. I will
2 abide by your decision.

3 MR. CASE: All right. I note that there are
4 now 10 members who are absent from this hearing -- from
5 this meeting, out of a total of 27 on our Commission.

6 I also understand that at the next meeting it
7 is hoped that there will be a unanimous or almost unanimous
8 meeting of the Commission so that they can have their
9 picture taken.

10 I think it would be, because of the importance
11 of this matter, namely the vote on the inclusion or
12 deletion of the provisions relating to the Ober Law (and
13 not having a picture taken), because it is so important
14 and because I think that all of the members of the Com-
15 mission should be here, as many as can be here to hear
16 the debate, I would move, Mr. Chairman, that the considera-
17 tion by the Commission of this item be deferred, and be
18 made a special order of business at our December 19th
19 meeting.

20 THE CHAIRMAN: Is there a second?

21 JUDGE ADKINS: I will second the motion.

1 THE CHAIRMAN: Let me ask a question before
2 putting this motion. Mr. Noonberg, do you know from your
3 conversation with General Murphy whether there is any
4 prospect that the pending case will be decided between
5 now and the 19th?

6 MRS. BOTHE: I can answer that because I am
7 one of the counsel on the case.

8 THE CHAIRMAN: Can you?

9 MRS. BOTHE: No.

10 THE CHAIRMAN: There is no possibility?

11 MRS. BOTHE: No. You see, now, the jurisdiction--
12 al statement was just submitted and the State hasn't even
13 answered it yet so --

14 THE CHAIRMAN: Let me ask one other question.
15 I take it that the Committee's concern here is solely with
16 whether a provision such as this shall be in or not in
17 rather than with the particular language?

18 MRS. BOTHE: That's correct. It is really a
19 philosophical matter rather than any other --

20 THE CHAIRMAN: All right, so that to delay
21 not
action until the 19th is/going to involve further

1 consideration of language if the Commission should decide
2 to retain the provision.

3 MRS. BOTHE: We have, of course, recommended
4 its deletion. Now, if the Commission should decide other-
5 wise, I would think perhaps the language might be subject
6 to review by the Commission and perhaps first by the
7 Committee.

8 I feel in trying to read the language just a
9 few minutes ago, I would think Dr. Burdette was wincing
10 maybe at my reading rather than at the words I had to
11 read, but it is very, in my opinion, clumsy and badly
12 expressed; if the sentiment is a good one it could be
13 expressed better.

14 THE CHAIRMAN: All right. Dr. Templeton.

15 DR. TEMPLETON: Mr. Chairman, before any vote
16 is closed I would like Mr. Case to clear his language on
17 this motion. If I heard him correctly -- well, forgive
18 me, what was the motion?

19 THE CHAIRMAN: The motion was simply to defer
20 further consideration of this section until the next
21 meeting of the Commission.

1 DR. TEMPLETON: Well, I thought I heard Mr. Case
2 include Ober Law in his motion. It is not acting on the
3 Ober Law?

4 THE CHAIRMAN: No.

5 MR. CASE: Let me clarify it.

6 DR. TEMPLETON: I would appreciate it.

7 MR. CASE: What I am saying is I think a
8 favorable vote on the Committee's recommendation, and I
9 really don't know how I would vote on it, could easily be
10 construed as a recommendation by this Commission against
11 the provisions of the Ober Law, and because even though
12 the Committee does say that they think as a practical
13 matter through the mechanism of the oath-taking that the
14 substance would be preserved, this is a very tough concept
15 to put across, and I think that it is so vital that a full--
16 the full Commission ought to be here to vote on it. We have
17 here today 40 per cent absent.

18 DR. TEMPLETON: Yes.

19 MR. CASE: And I think that this ought to be
20 deferred until we have a, really a representative group.

21 THE CHAIRMAN: Dr. Jenkins.

1 DR. JENKINS: My second was not concerned at
2 all with the Ober Law but rather on the last statement of
3 Mr. Case. It is an important issue and one on which I
4 think we should have as many members of the Commission
5 present as possible. I think it is unfortunate that he
6 brought the Ober Law point in this motion.

7 THE CHAIRMAN: Any further discussion? Mrs. Bothe.

8 MRS. BOTHE: If I may speak to that, I was
9 wondering whether the attendance at the December 19th
10 meeting would necessarily be so much more complete than
11 this? I for one will probably be unable to attend because
12 of the proximity of the Christmas holidays and some plans
13 I have then. I think I may not be the only member of the
14 Commission caught up with the holidays.

15 THE CHAIRMAN: Let me say this, every effort
16 is going to be made to have the attendance at the next
17 meeting as near to 100 per cent as possible, even if it
18 is necessary that we get another date. It is very important
19 that we get all the members present if possible, or as
20 nearly as many as we can.

21 MRS. BOTHE: All of these things, unless it does

1 occur that nearly a hundred per cent is present, will
2 become a numbers game situation. Perhaps I am speaking
3 only from my selfish view of wanting to have an opportunity
4 to vote on this issue.

5 THE CHAIRMAN: Any further discussion? Are you
6 ready for the question?

7 The question arises on the motion to defer
8 further consideration by the Commission of the retention
9 or deletion of Article XV, Section 11 until the next
10 meeting of the Commission and that it be then made a
11 special order of business.

12 All in favor signify by saying aye. Contrary,
13 no.

14 I think the ayes have it, but we will take a
15 show of hands.

16 All in favor signify by a show of hands.

17 MR. BROOKS: 12.

18 THE CHAIRMAN: Contrary?

19 MR. BROOKS: 3.

20 THE CHAIRMAN: A vociferous 3. The motion
21 carries 12 to 3.

1 I think that then would conclude consideration
2 of the Eighth Report of the Committee on Miscellaneous
3 Provisions.

4 The next item is the consideration of the
5 Seventh Report of the Committee on the Executive Department.
6 Judge Adkins.

7 JUDGE ADKINS: Mr. Chairman, by way of a pre-
8 liminary apology, I suppose, may I say, that this Report
9 has not been/textural form presented to my Committee.

10 The reason for that is the fact that we received it on
11 Wednesday of this week and there has not been time to have
12 a Committee meeting since.

13 The substance of the Report, however, has been
14 discussed at the Committee level. Indeed it was -- the
15 recommendations contained in this Report have been inherent
16 in other recommendations which we have made, and in our
17 Sixth Report which was in essence a draft of the entire
18 Executive Article, which made no reference to the Board
19 of Public Works.

20 Certain comments, however, have been made since
21 which seem to make it desirable to have this matter

1 presented as a definitive position, and that is the reason
2 why we are here with this Report.

3 Basically, we are recommending that the Consti-
4 tution contain no further reference to the Board of Public
5 Works.

6 The Board of Public Works in its origin, as
7 set forth in the report itself, arose originally in the
8 Constitution of 1851, re-enacted in the Constitution of
9 1867.

10 The powers of the Board as they -- as it is now
11 constituted are basically statutory and not constitutional.
12 Reference to the Constitution currently gives the Board
13 only powers which by this time have in essence become
14 obsolete. If it is desired that the powers which the
15 Board currently hold continue to be exercised, we think
16 that that can be done by Legislative enactment without the
17 necessity of Constitutional sanctions.

18 We have earlier recommended and this Commission
19 has approved the elimination of both the Attorney General
20 and the Comptroller as elected officers.

21 I understand that some question may arise at

1 this meeting relative to a reconsideration of one or both
2 of those recommendations, but for the moment assuming that
3 those recommendations are to hold, there seems to be no
4 logical reason why the Board of Public Works need to be
5 an inherent part of the Constitution. We think it is
6 contrary to the whole concept, the whole underlying
7 philosophy of the Executive Article which is basically
8 to create a strong Executive to the extent that you hedge
9 him around with the necessity of having his decisions
10 subject to review by other officials of the State Govern-
11 ment. To that extent you are weakening the underlying
12 philosophy which we have heretofore adopted.

13 I think that if you haven't had a chance to
14 read the Report, you have seen basically the position that
15 we are taking in the matter. We therefore recommend that
16 the Board of Public Works be eliminated from the Consti-
17 tution.

18 This is not to say that the Board of Public
19 Works itself need necessary be abolished. If the Legis-
20 lature in its wisdom thinks there is a proper place for
21 such a body, it is certainly free to continue it as such.

1 THE CHAIRMAN: Any questions? Any comments?
2 Any motion? If not, the recommendation of the Committee
3 would stand.

4 Now, Judge Adkins, I understand that by an
5 informal arrangement there is to be a motion for recon-
6 sideration of the previous action of the Commission with
7 respect to one of the recommendations of your Committee.

8 JUDGE ADKINS: I understand there was to be
9 such a motion. The Chairman of the Committee is not going
10 to make the motion but we will not object to it if the
11 motion is made.

12 THE CHAIRMAN: Mr. Case.

13 MR. CASE: Well, I will, to get the matter on
14 the floor, I will move -- may I ask a question first?

15 THE CHAIRMAN: Yes, sir.

16 MR. CASE: I want to move that this matter be
17 reconsidered, but I understand under our rules that this
18 is not subject to debate.

19 THE CHAIRMAN: That is correct.

20 MR. CASE: Would it be in order to explain to
21 the members here the background of this motion before I

1 make the motion?

2 THE CHAIRMAN: I think it would be desirable.
3 Do it before you make the motion.

4 MR. CASE: Before I make the motion, all right.
5 The Committee on Taxation and Finance has one
6 piece of business remaining to bring to the attention of
7 the Commission and that is whether or not there should be
8 some Constitutional provision relating to what I call, for
9 the lack of a better way of describing it, the flow of the
10 State funds.

11 We have adopted previously, as you all know,
12 a rather elaborate budget provision which deals with how
13 State monies go out after they have been collected, how
14 they are disbursed, under what rules, and so on and so
15 forth, but there has not been a recommendation yet as to
16 what if anything the Constitution should say about how
17 the money comes in, other than, of course, the fact that
18 it comes in through taxes, fees and so on, but should
19 there be a department which administers the collection
20 of revenues? Should there be a, one person, a Treasurer,
21 a Comptroller or so on who has this obligation and who is

1 Constitutionally responsible for the receipt of revenue?

2 Now, this is a problem which is still being
3 discussed by our Committee. To get an insight into the
4 current functions of the State Government, we, our Com-
5 mittee, along with Dale Adkins' Committee jointly met
6 with Comptroller Goldstein to discuss this facet of the
7 State Government.

8 Actually, from the standpoint of my Committee's
9 reference, we were interested solely in the subject that
10 I have discussed, but Comptroller Goldstein took the
11 occasion of that hearing to present a very elaborate
12 defense of his office and a very elaborate defense of the
13 proposition that the Comptroller should remain an elected
14 officer and should remain a Constitutional officer.

15 He qualified that after some discussion and
16 examination by saying that he didn't care whether it was
17 a Comptroller, whether you called him a Comptroller, or a
18 Treasurer, or by any other name, but there ought to be
19 some one person responsible directly to the people who
20 would be in charge of the, generally in charge of the
21 collection of State revenues and all of the things that

1 go with that kind of an assignment.

2 In view of the fact, and this implies no
3 criticism on the Committee on Executive Affairs, but it
4 is true, and I think it should be stated in view of the
5 fact that Comptroller Goldstein had not been interviewed
6 by that Committee at the time when it made its recommenda-
7 tion that the Comptroller -- the office of Comptroller be
8 deleted from the Constitution, it has been agreed between
9 the Chairman of that Committee, Judge Adkins, and myself,
10 that I would offer and he would second a motion that that
11 particular matter be reconsidered by the Commission.

12 THE CHAIRMAN: You now so move?

13 MR. CASE: And I now so move.

14 THE CHAIRMAN: Is there a second?

15 DR. BARD: Seconded.

16 THE CHAIRMAN: The motion is not debatable.

17 The question arises on the motion to reconsider
18 the previous action of this Commission that the Constitution
19 provide that the office of Comptroller be an appointive
20 rather than an elective office. A vote aye is a vote in
21 favor of reconsideration, it is not a vote on the substantive

1 question. Mr. Della.

2 MR. DELLA: Just one question. Would this be
3 just for the Comptroller's position and not the Attorney
4 General?

5 THE CHAIRMAN: That's correct. Any further
6 discussion?

7 JUDGE ADKINS: Is discussion in order?

8 THE CHAIRMAN: I am sorry. Are you ready for
9 the question? A vote aye is a vote in favor of recon-
10 sideration, it is not a vote on the substantive question.
11 All in favor of reconsideration signify by saying aye.
12 Contrary, no.

13 I will have to take a show of hands. All in
14 favor signify by a show of hands.

15 MR. BROOKS: 11.

16 THE CHAIRMAN: Contrary.

17 MR. BROOKS: 4.

18 THE CHAIRMAN: The motion is carried 11 to 4.

19 Now, Judge Adkins, the matter is before us
20 again on a reconsideration of the recommendation of your
21 Committee. You have the floor.

1 JUDGE ADKINS: Mr. Chairman, I voted in favor
2 of reconsideration for the reasons which Mr. Case stated,
3 to wit, that our Committee did not have the benefit of
4 Senator Goldstein's views at the time that we made our
5 original recommendation. Having had the benefit of those
6 views, our position, I think, remains unchanged.

7 I did, however, feel that in view of the fact
8 that he had presented a statement both to the joint Com-
9 mittees on Finance and the Executive, and also had presented
10 a written statement to this Commission, that the matter
11 should be at least revoted on in the light of all the
12 evidence.

13 I would like for the moment to direct myself
14 to his memorandum, in view of the fact that I think it is
15 fair to say that the Committee's position is unchanged.
16 We do not feel that there is evidence submitted here which
17 is in any sense new in terms of the consideration which
18 was given by us to this problem.

19 We did have the benefit of hearing from Governor
20 Tawes who has served this State as Comptroller for more
21 years than any other single individual, and his views were

1 quite firm that the office of Comptroller need not and
2 indeed should not be an elected official. We also had
3 similar views from former Governor Lane and former
4 Governor McKeldin. The recommendations of the Sobeloff-
5 Stockbridge Commission some 15 years ago recommended that
6 the office of the Comptroller should not be an elected
7 office. The model Constitution makes no reference to
8 any elective office of this nature.

9 With the exception of Senator Goldstein's
10 position, we have had no evidence presented to us which
11 indicates the desirability of continuing it as an elected
12 office. In his memorandum he makes three basic points
13 which are articulate but in our opinion not persuasive.

14 First of all, he points out that the Comptroller
15 is a member of the Board of Public Works and hence acts as
16 a check to perhaps an arbitrary governor. With the action
17 of this --

18 MR. CASE: May I interrupt you?

19 JUDGE ADKINS: Yes.

20 THE CHAIRMAN: I think the record will be better
21 would
if you/do it later.

1 MR. CASE: I was going to suggest in deference
2 to Senator Goldstein and rather than have the charge made
3 that he was in any way misrepresented, that somebody,
4 maybe Mr. Brooks, read the memorandum to the Commission.
5 It is not very long.

6 THE CHAIRMAN: I think it was circulated to
7 every member of the Commission, Mr. Case.

8 MR. MARTINEAU: No.

9 THE CHAIRMAN: All right.

10 JUDGE ADKINS: It was not? I thought it had
11 been.

12 MR. BROOKS: Do you want it read?

13 THE CHAIRMAN: Do you want to read it, Judge
14 Adkins, or do you want Mr. Brooks to?

15 MR. CASE: I think it should be read.

16 JUDGE ADKINS: Well, I will be glad to read it.

17 "The Office of Comptroller of the Treasury was
18 originally created by the Constitution of 1851 (Article 6,
19 Section 1). The Comptroller is now chosen by the qualified
20 electors of the State for a term of four years. The
21 Comptroller and the Treasurer constitute the Treasury

1 Department of the State but it is significant to note that
2 while the Comptroller was made an elected officer of the
3 State, the office of Treasurer was made one to be appointed
4 by the two Houses of the Legislature.

5 "Here we find action on the part of the
6 Constitutional Conventions of 1851 and 1867 to establish
7 a system of checks and balances, with the Comptroller
8 responsible to the people who form the electorate and the
9 Treasurer to the General Assembly. We believe that the
10 drafters of the 1851 and 1867 Constitutions acted wisely
11 in establishing these checks and balances. We believe
12 that it was important in 1851 and 1867 and we feel that it
13 is even more important today. We do not feel that the
14 Governor should be given the power to appoint the Comp-
15 troller for, in so doing, the system of checks and balances
16 we now have could be destroyed.

17 "The person who runs for Comptroller today is
18 aspiring to a most important office and, in so doing, he
19 subjects himself to the close scrutiny of the voters.
20 Thus, one who is elected Comptroller today must have a
21 great degree of capability and fiscal responsibility and,

1 above all, he must devote all of his time to the job if he
2 is to be successful and meet the approval of those who
3 elected him to the office.

4 "An appointee of the Governor may not meet these
5 qualifications and the office could revert to one where the
6 appointee was the Comptroller in name only, with policies
7 and decisions handed down to him by the Chief Executive in
8 power.

9 "Over the years, the duties of the Comptroller
10 have greatly increased over those as originally set forth
11 in Article 6, and now encompass the collection of the
12 major portion of the State's tax revenue. This assignment,
13 plus many others, by the Legislature to the Comptroller
14 shows their confidence in the present system.

15 "THE BOARD OF PUBLIC WORKS: The Comptroller is
16 a member of the Board of Public Works, the other two members
17 being the Governor and the State Treasurer. This Board
18 exercises supervision over all public works. It acquires
19 land for public use, awards contracts, sells State bonds,
20 and performs other functions necessary to the operation of
21 the State. As you can see, grave responsibilities are

1 placed on the Board of Public Works, which is composed
2 of three independently elected officials, with the
3 Governor and the Comptroller being directly responsible
4 to the people, and the Treasurer to the Legislature. If the
5 Governor is to appoint both of these officials, the Board
6 of Public Works will be emasculated as an effective policy
7 making body, since all decisions will be those of one man,
8 the Governor.

9 "THE BOARD OF REVENUE ESTIMATES: The Board of
10 Revenue Estimates consists of the Budget Director, an
11 appointee of the Governor; the State Treasurer, who is
12 elected by the Legislature; and the Comptroller, who is
13 elected by the people. This Board is responsible for the
14 estimating of the State's Revenues, in accordance with
15 Article 41, Section 194, of the Annotated Code of Maryland
16 (1957 Edition). This Board acts as an independent body
17 and its estimates are made without reference to the budget
18 requirements for the next fiscal year.

19 "Under our present constitution, Maryland must
20 have a balanced budget and this provision should be con-
21 tinued in the new constitution, as it has proved sound for

1 the past fifty years and has kept the State in Sound
2 financial condition. It would appear obvious that a Board
3 of Revenue Estimates, with an independent system of revenue
4 estimating, will be necessary under any constitution, but
5 the only way independent estimates can be made is to have
6 people on the Board who are free to exercise their own
7 independent judgment and not be influenced by the budgetary
8 requirements.

9 "Experience has shown that had the Board of
10 Revenue Estimates not exercised independent judgment in
11 the past in the formation of realistic estimates, deficits
12 would have resulted and the State would have found itself
13 in financial difficulties. As a result of realistic
14 revenue, estimates, it has been necessary for the Chief
15 Executive at times to face up promptly to the need for
16 new tax sources in order to present a balanced budget.

17 "A Governor running for re-election might be
18 tempted, with a controlled Board of Revenue Estimates, to
19 hold off a tax increase by balancing his budget on paper,
20 which might result in a deficit for the next administration.

21 "STATE RETIREMENT SYSTEMS: The incumbent

1 Comptroller is Chairman of the Board of Trustees of the
2 State Employees' Retirement System, Vice-Chairman of the
3 Board of Trustees of the State Teachers' Retirement System,
4 and a member of the Board of Trustees of the State Police
5 Retirement System.

6 "These systems administer the retirement funds
7 and pension funds of State employees, teachers and police.
8 These funds, which now total approximately \$460,000,000.00,
9 represent contributions from the salaries of dedicated
10 State employees, with matching funds from the State, and
11 must be held safe and secure. The incumbent Comptroller
12 has instituted a diversified program for the investment
13 of these funds, in F.H.A. mortgages, ground rents,
14 corporate bonds, common stock, et cetera, which investments
15 are now yielding 4.3 per cent interest.

16 "It is important that a person of independent
17 judgment be a member of these Retirement Boards in order
18 that the Retirement Systems of our State may continue to
19 remain in sound financial condition.

20 "FINANCIAL REPORTS: Upon the assumption of
21 office, the incumbent Comptroller adopted an 'open door'

1 policy with respect to financial information. He has kept
2 the public fully informed as to the financial affairs of
3 the State. Under an appointed Comptroller, it is possible
4 that certain financial information could be withheld if
5 such information might be embarrassing to the Governor.
6 Past experience has proven that the Comptroller has
7 released to the people of Maryland financial information
8 beneficial to them.

9 "We see no necessity for giving the Governor
10 full control over the fiscal affairs of the State. As a
11 matter of fact, to do so necessarily presupposes a high
12 degree of fiscal responsibility in candidates for Governor,
13 and we all know that such is not always the case. If the
14 Governor is free to act in fiscal matters without any
15 person otherwise responsible to the public acting in the
16 capacity of a fiscal watch dog, an irresponsible Governor
17 in one term of office could place the State in an adverse
18 financial position from which it might take many years to
19 recover.

20 "It seems to me that there is a necessity for a
21 system of checks and balances within the Executive Branch

1 of government and that the present system should be con-
2 tinued, with an elected Comptroller."

3 That concludes the statement of Mr. Goldstein.

4 MR. GENTRY: You didn't read the last line,
5 God bless you all real good.

6 THE CHAIRMAN: That was delivered orally.

7 JUDGE ADKINS: Now, it does not seem to -- well,
8 let me say to me rather than us, because the Committee
9 itself has not acted, has not met since this statement
10 was presented. It does not seem to me, however, that there
11 is any substantial new evidence here that was not before
12 our Committee at the time we made the original recommenda-
13 tion and at the time this Commission adopted our Report
14 rather overwhelmingly, I believe, as far as the Board of
15 Public Works, as I started to say earlier. We have now
16 by the adoption of the paper which we presented fifteen
17 minutes ago, recommended that the Board of Public Works
18 no longer be a Constitutional body and hence the Comptroller's
19 membership in that Board may or may not be significant here-
20 after.

21 He refers to the Board of Revenue Estimates.

1 I think there is certainly merit in having an independent
2 Board of Revenue Estimates. Whether that is achieved by
3 having an elected Comptroller I think is a matter perhaps
4 for some caveat.

5 The State Retirement Systems to which he
6 refers are again highly significant. Again, I do not
7 see the necessity for having an elected Comptroller to
8 have an adequate management and administration of the
9 State Retirement Systems.

10 We hope that the Commission will sustain its
11 prior position and allow the two Chief Executive Officers
12 of the State to be constitutionally elected to be the
13 Governor and the Lieutenant Governor. We think that there
14 is no other necessity, there is no other level of govern-
15 ment at which anybody other than these people are, in the
16 administrative branch, are chosen by popular vote.
17 Certainly, at the Federal level it is not done. At none
18 of the local levels under the current charter form of
19 government at least it is not done, and it seems no reason
20 in our opinion to make an exception of it at the State
21 level.

1 THE CHAIRMAN: Any further discussion?
2 Mr. Martineau.

3 MR. MARTINEAU: My only comment would be, I
4 think Mr. Goldstein's description of the qualities that
5 are needed for a Comptroller are those which are less
6 capable of being satisfied by the elective process.

7 THE CHAIRMAN: Mr. Clagett.

8 MR. CLAGETT: I would make the comment that they
9 have been well satisfied by the present Comptroller.

10 THE CHAIRMAN: Mr. Case.

11 MR. CASE: Well, I think --

12 MR. GENTRY: Bless you too.

13 MR. CLAGETT: Off the record.

14 (Discussion off the record followed.)

15 THE CHAIRMAN: Mr. Case.

16 MR. CASE: I think that the emphasis should be
17 placed where Mr. Goldstein placed it in his oral presenta-
18 tion after he read the statement that you have just heard,
19 and it is simply this as he sees it, that while it is true
20 that in the Federal sense you do not have an independently
21 elected official to deal with revenue matters, yet you do

1 in most of the State Constitutions that we now have.
2 That was his first point. That we asked him, and I have
3 forgotten how many he said. Maybe you remember, Mr. Chair-
4 man, but my recollection was that the overwhelming majority
5 of states provide that the person who is in charge of the,
6 and responsible for the fiscal affairs of the State should
7 be elected, or is elected.

8 Now, the second point he made was that this is
9 a salutary provision because it does provide a system of
10 checks and balances. By that he meant that if a person
11 is elected by the people and feels directly responsible
12 to them, then in the most important aspect which government
13 deals with them, namely their pocketbook, he is free to
14 report to the people the fiscal facts as he sees them and
15 is not bound by what the Governor may say.

16 He pointed to his own experience in this past
17 administration, almost past administration, when the
18 Governor advocated a tax increase and when he campaigned
19 very strongly that there was no necessity for a tax in-
20 crease and brought that matter to the attention of the
21 people, and, of course, he was later proven to be right

1 and the Governor proven to be wrong, and he said that he
2 felt that this was something that the people were entitled
3 to.

4 He said that in no way could the people get
5 this through the office of an appointed fiscal agent
6 because the appointed fiscal agent would undoubtedly do
7 what the Governor told him to do and could not exercise
8 the degree of independence that the people were entitled
9 to have as their representative.

10 We asked him whether or not he felt that the
11 office of Comptroller could be combined with that of
12 Treasurer and he answered that question in the affirmative,
13 stating in effect that he thought that his concept of it
14 was the chief fiscal officer of the State combining all of
15 the duties of the Comptroller and all of the duties of the
16 treasurer, and he felt that this was an important integral
17 part of government and that the people should be allowed
18 to place somebody there who would be directly responsible
19 to them.

20 Now, I think that about sums it up, Mr. Chairman.

21 THE CHAIRMAN: Yes, I don't -- to answer your

1 question directed to me, I don't think he said that there
2 were a majority or an overwhelming majority, whatever it
3 was you said of states that provided for the election of
4 a fiscal officer like this; there was a substantial number.
5 My recollection is there were 13, but we will try to check
6 that.

7 MR. CASE: My memory is quite hazy on that.
8 I know he mentioned California and I believe Oregon.

9 THE CHAIRMAN: Mr. Power, do you happen to
10 know offhand?

11 MR. POWER: I do not.

12 THE CHAIRMAN: We will check it and let you
13 know.

14 MR. CASE: I wish you would because my memory
15 is hazy on that, but he did say there was a substantial
16 number, at least we can go on that.

17 THE CHAIRMAN: Dr. Bard.

18 DR. BARD: I would just like to add a few points
19 to that which was given by Mr. Case.

20 First, I would like to correct one of the state-
21 ments in regard to the fact that there are no local units

1 that have the Comptroller elected by the people. Baltimore
2 City does elect the Comptroller; and next I would like to
3 point to the fact that in a large number of states, and
4 I'm not sure how many, the key point is that at least one
5 other state-wide officer is elected, one other than the
6 Governor.

7 Now, the way we have arranged the Governor and
8 a Lieutenant Governor, this really represents one individual
9 in a way, at least one political party.

10 The next point that I would like to make is that
11 on two recent occasions the Governor represented the so-
12 called minority party. With the Comptroller representing
13 the majority party, the possibility of this taking place,
14 there is a bridge to the Legislature that would not other-
15 wise be available and I think that is a point which might
16 be given some emphasis, and I do believe that when the
17 Governor represents the minority party it occurs to me
18 that in these bodies such as the Board of Revenue Estimates,
19 et cetera, a representation from the so-called majority
20 party as applied to the Legislature, I know we used the
21 word majority party in terms of the Governor, having such

1 representation would be significant, but I am mainly
2 concerned about the fact that overnight we are eliminating
3 all other State-wide elective officers other than the
4 Governor.

5 Now, I don't feel that way about the Attorney
6 General. I think this is another kind of a responsibility.

7 I would like to see us keep one more.

8 THE CHAIRMAN: Any further discussion? Mr. Sayre.

9 MR. SAYRE: With respect to that post, or to
10 the checks and balances that Mr. Goldstein referred to,
11 the question was raised, well, suppose that the State
12 Legislature created a general accounting office type of
13 establishment similar to the Federal Government, and he
14 that generally referred that/would be another check and balance.
15 However, this would be the area where there could be a
16 bona fide post, auditor, a proper channel for a minority
17 party and an independent revenue estimating source.

18 If you look at the difference of opinion between
19 Mr. Goldstein and Mr. Tawes when Mr. Tawes did gain his way
20 with the State Legislature and then later it was reversed,
21 they both had access to the same information but it was a

1 different interpretation as to how to use that information,
2 and here you had a case where several elements could have
3 entered in. Now, I am not saying that these elements
4 entered into this particular case, but you would have the
5 possibility of vying for a political advantage, a position
6 of advantage wherein you would maybe be able to run for
7 Governor next time or in some other political position,
8 and use this opposition to the Governor as one of your
9 stepping stones.

10 One of the purposes of the Executive Committee
11 here was to have the buck stop at the Governor's office.
12 If you were to divide the responsibility of the Governor's
13 office by having other elective officers, you are making
14 it so the Governor cannot be responsible for those functions
15 that he is supposed to be responsible for in the Executive
16 Department. It is unwise from a public administration
17 viewpoint to split responsibility that way. The Governor
18 is responsible to the people more so than the Comptroller.
19 He lives in a glass house. The sources of independent
20 revenue estimating can be obtained elsewhere. It is not
21 to the advantage of good administration to have this type

1 of splitting of responsibility.

2 Now, in regard to functions, and I think this
3 is a very important thing for this Commission to be aware
4 of, what are the functions that the Comptroller performs
5 today, I am talking about major functions. In effect,
6 this is sort of that of an auditor, collector and estimat-
7 ing revenue. All these functions are such that they are
8 not policy-making. Therefore, I do not think that they
9 should be elective.

10 Mr. Goldstein indicated that he would not be
11 opposed, in fact he would favor more people being elected
12 State-wide in the Executive Branch, and one statement he
13 referred to was where they have, I think, seven state-wide
14 officers elected. In other words, his idea of checks and
15 balances would so split up what we are trying to achieve
16 here in this Commission that I think it is a matter of
17 viewpoint as to how best you are going to achieve what we
18 are trying to achieve in a new Constitution.

19 Today, most State Constitutions are hopelessly
20 archaic and I hope we don't make that mistake in the
21 Executive Department.

1 THE CHAIRMAN: We have been discussing the
2 Report of the Committee. There is no motion before us
3 and before we move any more, I think if we are going to
4 have further discussion there ought to be a motion. Do
5 you want to make a motion, Mr. Case?

6 MR. CASE: Well, I will make the motion that
7 there be in the Constitution a designated chief fiscal
8 officer who shall be elected by a vote of the people.

9 THE CHAIRMAN: And is there a second?

10 MR. DELLA: Seconded.

11 THE CHAIRMAN: All right. Now, Mr. Della.

12 MR. DELLA: Mr. Chairman, I am in support of
13 the motion because after we took action on this before, I
14 gave it some very serious thought, and I, well, was a little
15 bit -- became a little bit concerned about the action that
16 we had taken.

17 I am aware that we need a person at the head
18 of government who is going to be responsible to the people,
19 and at the same time I object to some degree to the possi-
20 bility of this same person developing around him the kind
21 of a situation that could be, what we might call a kingdom

1 as such, and I am of the opinion that this could very well
2 happen if he is going to be in a position to name his
3 Attorney General, name his Comptroller, and surround
4 himself with the kind of people that would be doing his
5 bidding as such, who would be responsible to him and not
6 to the people as such.

7 I can see the wisdom of the Governor having
8 his own Attorney General who interprets the laws of the
9 State and such, that it would be of certain advantages
10 to him because where you have a minority party and a major-
11 ity party, if the minority party is elected Governor and
12 the majority party is elected Attorney General, I am almost
13 sure the minority Governor is going to have someone he can
14 depend on to interpret the laws to his benefit without
15 subjecting himself to a lot of ridicule from the population
16 as such.

17 In terms of the Comptroller, I think this is a
18 different situation. I am of the opinion that the people who
19 are paying their tax monies into the State feel that they
20 should have some voice in saying who this person is going
21 to be and how that office is going to be operated as far

1 as the collections and expenditures of money, and a voice
2 that can be heard in that regard is someone that they can
3 have confidence in if they elect him as such. If he turns
4 out to be a person that does not conform to that philosophy,
5 they have a right to remove him at the next election.

6 I think in these kind of situations, I think
7 the people's voice should be heard and regarded in the
8 type of people they want in these type of positions, so
9 I support that motion.

10 THE CHAIRMAN: Mr. Hargrove.

11 MR. HARGROVE: Mr. Chairman, I think there is
12 one thing that we must keep in mind. I think what we are
13 trying to do is strengthen the Executive Branch as well as
14 the Legislative Branch and the Judicial Branch.

15 Now, it seems to me what we are talking about
16 is a system of check and balances within the Legislative
17 Branch of government. Now, the concept of checks and
18 balances as I understood it was never really that concept.
19 It was a concept of between branches of government, and I
20 think we are assuming, and I think even Mr. Goldstein
21 assumes in his paper that we are going to have a great

1 many incompetent Governors because he says if we get an
2 incompetent Governor so many things can happen.

3 I think we have to assume that we are going
4 to -- that the people are smart enough to elect a competent
5 Governor and thereby he will in turn appoint competent
6 people to the positions of trust within the State govern-
7 ment, and I think as long as we have a system in one
8 branch of government whereby three, four or five people
9 are elected who have little or no responsibility to each
10 other but all to the electorate, then that thing that we
11 are driving at in the formation of the new Constitution
12 is defeated, that is the strengthening of that branch of
13 government, so for that reason I would be against the
14 inclusion of this office as a constitutional elective
15 office.

16 THE CHAIRMAN: Any further discussion? Judge
17 Adkins.

18 JUDGE ADKINS: Since I will not have the right
19 to close, I would simply like to underscore what has just
20 been said.

21 It seems to me that the point has been very

1 forcibly made that checks and balances should not apply
2 within a single branch of government, and to the extent
3 that we try to set up a branch where each branch has a
4 system of checks and balances, to that extent we set up
5 a situation where movement becomes difficult in each
6 direction.

7 The theory of checks and balances is well
8 ingrained that it is a magic word in terms of political
9 philosophy, but I think the point has been well established
10 that it should not be made in a branch of government.

11 I am a little at a loss as to how to answer
12 this argument that we now have a minority Governor and
13 hence we need a member of the majority party to protect
14 the majority party in the State Government. This argument
15 was not, interestingly enough, made prior to the recent
16 election when this was in discussion before. I have to
17 say that I cannot see how the situation has changed in two
18 months time to change the recommendation of this Committee.
19 It does not seem to me that is a good argument. That argu-
20 ment will have to bear very strong analysis. If the people
21 have elected to change their leadership at the very level

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. This section also outlines the various methods used to collect and analyze data, ensuring that the information is reliable and up-to-date.

2. The second part of the document focuses on the financial aspects of the organization. It provides a detailed overview of the budget, including the projected income and expenses for the upcoming year. This section also discusses the various financial risks that the organization may face and the strategies used to mitigate these risks.

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1 where the leadership can be effective, then it seems to
2 me that that leadership should be given the power to be
3 effective, and you should not have what was referred to
4 earlier as, I think, a kingdom, some fear of a kingdom.
5 What you are now going to have is two warring suzerainties
6 and not a kingdom.

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1 JUDGE ADKINS: I think that is a good note
2 on which for me to quit.

3 THE CHAIRMAN: Mr. Brooks?

4 MR. BROOKS: Two additional comments along the
5 same line; leaving the personality who holds office at
6 the present time out of the question, I think there are
7 two things in addition to note, one of which is, how the
8 State traditionally goes about selecting those candidates
9 who run for Comptroller and Attorney General. I think it
10 is notable that these persons are not altogether chosen
11 as candidates because of their capability for the par-
12 ticular office, but one major consideration in addition
13 to what background they may have for the job has to do
14 with other factors taken into consideration to balance
15 political tickets, which may not exactly produce the
16 person you really want to hold the job if you could do
17 it objectively without having to take into consideration
18 the balancing of your ticket proposition.

19 Second, I think the, not so much the minority
20 party situation, but the situation where you, in fact,
21 have the Governor of one party, whichever party it is,

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1 and a Comptroller of the other party, you are in the
2 situation whether it be a Comptroller or any other Member
3 of the Executive for which the Governor is ultimately
4 responsible of establishing an office to which people
5 look for more than the conduction of the particular job
6 for which that person is elected; whichever party that
7 person is elected from will look to that person as a
8 political leader and as a chief of the party and as a
9 person responsible for doing a great deal more than car-
10 rying out the functions of that job, which otherwise are
11 really the responsibility of the top of the Executive
12 Branch.

13 I don't know, if you want a strong Executive,
14 that this is one of the things that you want to accom-
15 plish in achieving a strong Executive.

16 DR. BURDETTE: Mr. Chairman, I am disposed to
17 vote in this situation for a strong Executive, as a
18 principle, without any reference to current officeholders
19 who will not be affected by what we do here, save as
20 they might be affected for some future term of office,
21 as I would understand the probabilities of our schedule.

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1 I realize we haven't developed our schedule, but I pre-
2 sume we aren't planning a Constitution which would take
3 an elective officer out of office for the term for which
4 he was elected. I may be mistaken. I would be astonished
5 if we get to that point. I would be prone to vote for a
6 strong Executive. When I say that, I have a question
7 that I should like to get in the record, and indeed,
8 inquire myself about: I think Judge Adkins was quite
9 right when he said that the most persuasive thing, as I
10 understood him, which the present Comptroller said is
11 that we must have or ought to have a means of getting
12 an independent professional estimate of revenues. Now,
13 I would presume that could be answered, and I ask whether
14 it be, could be answered by providing, leaving to the
15 wisdom of the Legislature to provide that there should
16 be such an office. It could have to be done by law. The
17 Governor could veto it, but in a situation in an attempt
18 to get a professional argument, I presume this would be
19 constitutional. Am I right?

20 THE CHAIRMAN: The Board of Revenue Estimates
21 is a statutory creature now.

[illegible]

1 DR. BURDETTE: I am attempting to get into
2 the record that it would be possible to set up an inde-
3 pendent rule making body.

4 THE CHAIRMAN: I think this is pointed out
5 in the earlier Report of the Committee on the Executive
6 Department. Any further discussion? I have a brief
7 comment before Mr. Case closes.

8 Mr. Goldstein was very articulate, and I
9 think very persuasive and made a strong case, but when
10 you think about it, two things stand out in my mind.
11 I am not thinking merely of his written statement but of
12 his oral amplification of it. One is the point mentioned
13 by Mr. Brooks that traditionally in Maryland, the Comp-
14 troller and the Attorney General are on a slate with the
15 Governor. Of course, this is always true in the primary,
16 and it may not always be true in the general election,
17 but by and large, it is; so that you don't have quite
18 the independence that Mr. Goldstein's statement would
19 make you think there is in the Comptroller, and I think
20 one of the reasons that his argument and his statements
21 were so persuasive was that he has proved the exception

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1 to the rule, and I think this is a matter of personality
2 rather than a matter of theory. In other words, I think
3 that Louie Goldstein has been an independent Comptroller,
4 and the fact that he is on the same slate with the Governor
5 hasn't prevented him from speaking his mind, but I think
6 we could be mislead into thinking that that would
7 traditionally or always or even in many instances be the
8 case. Secondly, and I think this is by far the more
9 important point that he made, he completely persuaded me that
10 there is a necessity in State government for a watchdog
11 of the Treasury, a post-audit man who was not dependent
12 on the Governor for his sources of information, but the
13 fact is that most of the functions of the Comptroller are
14 not of that nature. They are administrative. He is an
15 arm of the Executive in enforcing the law, collecting
16 taxes, et cetera, so that by far the greater part of his
17 function is not the function that his plea relates to,
18 and it seems to me that that function can really be
19 served best in some manner akin to that, that the Federal
20 government does, by appointment or designation or election,
21 whatever way the Legislature wants, of a position created

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1 by the Legislature, sort of a Comptroller of the -- not
2 Comptroller of the Currency, Comptroller General, function
3 so that you could have someone, not Chief Fiscal Officer,
4 in the sense of collecting the revenues, but Chief
5 Fiscal Officer in the sense of performing the post-audit
6 function completely independent of the government.

7 Finally, I want to simply say this to you:
8 This recommendation of the Committee of the Executive
9 Department was adopted, either unanimously or nearly
10 unanimously at the Easton meeting at which we had 25 members
11 present. Whatever action is taken on this day, where we
12 have only 17 present, I would hope would not be by close
13 division, because I think it would be unfortunate if a small
14 majority should overturn the action of practically the
15 whole Commission, so that whichever way it goes, I hope
16 it goes decisively.

17 Mr. Case?

18 MR. CASE: After hearing the lucid and, I
19 might say, brilliant paper of Senator Goldstein presented
20 here today, and recognizing as you must, that I am one who
21 voted in favor of the Commission's recommendations at the

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1 earlier stage and am now seeking to point up his point
2 of view, I should ask if anybody who doesn't have any
3 other questions, and I am sure they don't, I will let
4 the record stand as it is.

5 THE CHAIRMAN: Are you ready for the question?
6 All right, then, the question arises on the motion that
7 there is a provision in the Constitution for the election
8 of a Chief Fiscal Officer. A vote Aye is a vote in favor
9 of the position of the Committee, that there be no such
10 elective position provided for in the Constitution. All
11 those in favor, please signify by a show of hands.

12 MR. BROOKS: Two.

13 THE CHAIRMAN: Contrary?

14 MR. BROOKS: Fourteen.

15 THE CHAIRMAN: The motion is lost, 2 to 14.

16 MR. CASE: I didn't vote.

17 Now, Mr. Chairman, I wondered, is there any-
18 thing else?

19 THE CHAIRMAN: This concludes this matter.

20 MR. CASE: I have got a related thing.

21 THE CHAIRMAN: Does it have to do with the

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1 Executive Department?

2 MR. CASE: It has to do with the Fiscal Depart-
3 ment, really.

4 THE CHAIRMAN: Go ahead, then. Just a second,
5 Mr. Case. Judge Adkins, you didn't have anything further
6 for your Committee to report on?

7 JUDGE ADKINS: No, sir. We have the report
8 which we have filed, but it is basically a codification
9 of what has been previously acted upon.

10 THE CHAIRMAN: I announced this morning before
11 I came in that that was circulated for information, not
12 for action.

13 Mr. Case?

14 MR. CASE: Since everybody has their mind now
15 centered on this fiscal matter, I would like to present
16 to the Commission a question of policy for guidance
17 by my Committee, and I will state very generally the back-
18 ground: It has been the thinking of my Committee, and I
19 believe concurred in by -- is that correct, Dale?

20 JUDGE ADKINS: Yes.

21 MR. CASE: -- concurred in by the Committee on

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1 the Executive Department, that the Constitution should
2 provide for, in some way, for a Department of Revenue,
3 the chief of which would be not mentioned in the Consti-
4 tution, who would be designated by the Governor and that
5 there would be collected in this Department all of the
6 functions now exercised by the Comptroller and by the State
7 Treasurer, and that this be, including the post-audit
8 function, that Mr. Eney suggest.

9 I think that it would be very helpful to my
10 Committee to have an expression by the Commission as to
11 whether or not you think there should be such a provision.

12 THE CHAIRMAN: All right. Let's go around the
13 table, if we can, and get quickly an expression of views, but
14 before we do that, are there any questions about the pro-
15 posal?

16 Mrs. Bothe?

17 MRS. BOTHE: Yes. Could you give us just
18 some idea what purpose it might serve?

19 MR. CASE: There are a number of provisions in
20 the Constitution dealing with what I earlier called flow of
21 funds; State, for example, that all State monies must be

~~paid to the State Treasurer, so this would be one of the~~

[illegible]

1 things; this Department's only obligation would be in a
2 sense to supervise and to control that flow of funds into
3 the State. It would also perhaps have the obligation of
4 a post-audit procedure. It would have such other
5 obligations relating to fiscal affairs of the State that
6 might be delegated by the General Assembly, something of
7 that nature.

8 THE CHAIRMAN: Including for instance supervision
9 over the Office of State Auditor?

10 MR. CASE: That is right.

11 THE CHAIRMAN: Supervision over clerks of
12 court and all of these people?

13 MR. CASE: That is right; in other words, so
14 there would be a central place that the Legislature would
15 put these responsibilities rather than letting the Legis-
16 lature just go off in all directions and say, This one
17 should do it, that one should do it, et cetera, that it
18 would be sort of a central collecting office for these
19 fiscal duties which are, of course, very numerous.

20 MRS. BOTHE: Do you know how it is handled?
21 Other State Constitutions?

1 MR. CASE: Well, we have gotten, you might
2 say, a very poor response in an effort to get research
3 on this, and I think there are five or six States, maybe,
4 that have something of this nature, but I haven't had time
5 to look it up myself, and neither has my reporter; and
6 we have gotten nothing from the States.

7 THE CHAIRMAN: Mr. Brooks says that is about
8 all there are.

9 MR. BROOKS: There is hardly anything in any other
10 Constitutions on this subject.

11 THE CHAIRMAN: But you must remember also that
12 Maryland is the leader in the use of the Executive
13 budget, so that this shouldn't astonish you. Any further
14 questions before we get into an expression of views?

15 I take it Mr. Case is really asking for two
16 things: One, whether you deem it desirable that there
17 be some provision for central control of the flow of
18 funds into the State Treasury, and secondly, whether you
19 think that is something that should be provided at least
20 in skeleton form or in the Constitution or whether it is
21 something best left to the Legislature.

[illegible]

1 MR. CASE: That is exactly right.

2 THE CHAIRMAN: Let's go right around the table,
3 starting at my left; anyone who has any comment to make
4 on it?

5 MR. MARTINEAU: I would rather start with the
6 Executive Committee Chairman and get some indication
7 from the Committee as to whether they have considered
8 this and what their views are.

9 JUDGE ADKINS: Our Committee has not considered
10 it as a Committee matter. We have informally discussed
11 it among some of the members of the Committee, and I have
12 discussed it in considerable detail with Mr. Case.
13 Therefore, what I say will have to be a personal, not
14 Committee observation. I think the idea is sound. It
15 does seem to me there should be some constitutional
16 assignment of responsibility for the collection of funds
17 at a central place to permit the ease of accounting and
18 to permit the dissemination of accurate information
19 without the necessity of convening it from numerous
20 branches of the government. A Department of Finance
21 could, in my thinking, at least, envision not only the

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1 present functions of the Comptroller, but likewise the
2 present functions of the Treasurer, and would be the
3 accountable officer appointed by the Executive, but would
4 be the accountable officer for the receipt and disposition
5 of all State revenues.

6 I think the idea is quite sound in concept.
7 I would like to make one other comment, and that is to
8 refer back to the statement that the Chairman made in dis-
9 cussion of the last pending question about a post-audit,
10 some kind of post-audit procedure. Our Committee has
11 discussed that. We would like to see that implemented.
12 We thought it probably should come from the Legislative
13 Committee since we thought if it were to be truly effec-
14 tive, the post-audit procedure should be legislatively
15 oriented rather than executively oriented, but in answer
16 to the pending question, we think the idea has merit.

17 THE CHAIRMAN: Any further discussion or com-
18 ment or suggestion?

19 Mr. Clagett?

20 MR. CLAGETT: I think that a department of this
21 type is quite similar to the consideration that was given

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1 by the Political Subdivisions Committee on whether or
2 not we should recommend a Department of State and Local
3 Affairs and partly resolved that question in the nega-
4 tive, feeling it was properly a matter for statutory
5 provision rather than constitutional provision, and I
6 feel the same way as far as the Department of Revenue.
7 I feel it is properly statutory rather than constitutional.

8 THE CHAIRMAN: Any further comment?

9 Dr. Michener?

10 DR. MICHENER: At the Federal level, I just
11 might mention the whole trend is away from rigidity to
12 flexibility, even to the extent of giving the heads of
13 department and even the President power by executive
14 order to move functions around, rather than to cement it
15 in a constitutional provision.

16 THE CHAIRMAN: Any further comment?

17 Mr. Haile?

18 MR. HAILE: If it is desirable to combine the
19 offices of Comptroller and Treasurer, then the Legislature
20 would move. I suggest we leave it to the Legislature.
21 But the third official function of auditing, I don't

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1 believe I would favor, if I were a Member of the Legis-
2 lature, combining Auditor and Comptroller and Treasurer
3 all in one office, but I think on the legislative floor
4 is the best place to resolve these, not here in our pro-
5 posal for a Constitution.

6 THE CHAIRMAN: Any further suggestion or com-
7 ment?

8 Mr. Sayre?

9 MR. SAYRE: It seems to me that of necessity,
10 such a responsibility in the Executive Department would
11 require always current auditing and post-audit and that
12 the Legislature would not necessarily want to rely upon
13 that, and therefore would set up its own post-audit
14 activities, which I think it has a right to check
15 the bookkeeping system or the accounting system and
16 things of that nature to do with how you keep records of
17 fiscal policy achievements.

18 I am inclined to feel that they should be
19 statutory, personally. It just puts into the Constitution
20 something that I think will probably be there anyhow by
21 statute or by simply through the Governor's organizational

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1 powers.

2 THE CHAIRMAN: Mr. Martineau?

3 MR. MARTINEAU: My only question would be
4 with respect to this post-audit whether there is any
5 problem of the constitutional authority of the Legisla-
6 ture to create something similar to the General Accounting
7 Office, which is more of a branch of the Legislative
8 Department than a branch of the Executive Department,
9 which would have the authority to have access to all of
10 the records of the Executive Department, and if there is
11 any doubt as to its authority, I think it is well to put
12 it in here. If there is no doubt as to the authority of
13 the Legislature to do this, I don't see any reason to
14 do it.

15 THE CHAIRMAN: The State Auditor is completely
16 statutory, is it not?

17 MR. CASE: That is right; no doubt, the Legis-
18 lature could do it.

19 MR. MARTINEAU: The State Auditor is not inde-
20 pendent, I don't think, of the Executive. It is part
21 of the Executive Branch.

[illegible]

1 THE CHAIRMAN: But he is independent in a large
2 measure except he is appointed.

3 MR. CASE: You better believe he is.

4 THE CHAIRMAN: He exercises and is sworn to
5 exercise an independence of judgment.

6 MR. MARTINEAU: I gather the idea of the post-
7 audit independent of the Executive Branch was to have a
8 department which was not part of the Executive Branch of
9 the government, such as the General Accounting Office.

10 MR. SAYRE: That would be at the option of the
11 State Legislature, though.

12 MR. MARTINEAU: If they have the power, there is
13 no reason to put it in the Constitution. My only ques-
14 tion is, should there be a specific power in the Consti-
15 tution to create this, so that they can do it?

16 THE CHAIRMAN: Any further discussion?

17 Mr. Case, I think that is about it.

18 All right --

19 MR. CASE: I still don't know what --

20 THE CHAIRMAN: I don't think you have a consen-
21 sus. I didn't know that you want a consensus.

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1 MR. CASE: I rather gather the Commission
2 feels it should be legislative and statutory, and there
3 shouldn't be anything in the Constitution about it.
4 That is what I gather, am I wrong about this, is this
5 right?

6 THE CHAIRMAN: That is the way I think it is.

7 MR. CASE: Fine. That concludes the work
8 of my Committee.

9 DR. BURDETTE: Mr. Chairman?

10 THE CHAIRMAN: Just a second. Mr. Brooks says
11 that if you are serious that you are not going to make
12 a further report, maybe to have something in the record,
13 we ought to take a vote and have a consensus of it. Has
14 your Committee considered it enough that you would know
15 whether they are going to make a report on it independent-
16 ly?

17 MR. CASE: No. The Committee work has been
18 relegated to the Staff and Chairman up to now. The Staff
19 is now in bed with the flu. The Chairman is here.

20 THE CHAIRMAN: Let me take a vote just for
21 whatever benefit it may be so that we will have some idea.

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1 The question will arise on a consensus as to whether or
2 not the fiscal function which we have been discussing,
3 namely, some measure of possible audit review and control
4 of the inflow of money into the Treasury should be regu-
5 lated by the Legislature or whether there should be either
6 regulations or some authorization for it in the Consti-
7 tution. A vote Aye will be a vote in favor of regulation
8 of the subject matter by the Legislature. All those in
9 favor of legislative regulations, signify by a show of
10 hands.

11 MR. BROOKS: Seventeen.

12 THE CHAIRMAN: Contrary? The consensus, the
13 unanimous consensus of those present is that the subject
14 matter is one that could be left to regulations of the
15 Legislature.

16 We will now move to consideration of the
17 continuation of the Seventh Report of the Committee on
18 Political Subdivisions. This deals with Article XII,
19 Intergovernmental Relations, dated December 3, handed
20 to you this morning, a page and a half.

21 Mr. Claggett?

[illegible]

1 MR. CLAGETT: Mr. Chairman, back at the meet-
2 ing of September 20, 1966, the Commission considered
3 an intergovernmental article contained in the Committee's
4 Fifth Report, and at that time, Mr. Eney suggested that
5 the Section of that Article dealing with the permitting
6 of compacts between local government and other governments,
7 the
8 without/consent of the General Assembly, would be per-
9 mitted and that it was a movement in the wrong direction,
10 and could get the two governments, and particularly a sub-
11 division of the State government, into some difficulties.
12 This thought was concurred in by Mr. Sykes with respect
13 to the practical matters between a civil division and
14 another State, and there was a motion that was made and
15 seconded, which reads as follows: Resolved, that Article
16 XII be redrafted, with particular reference to clarifica-
17 tion of the fact that the Article encompasses inter-
18 governmental relations and cooperation; also to provide
19 safeguards for local governments or authorities with res-
20 pect to contracting outside the State and within the State.

21 With that mandate in mind, the redraft is now
 in front of you as a continuation of the Seventh Report,

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1 and I may read it, because it is quite brief: Article
2 XII, Interstate Governmental Agreement, Section 12.01,
3 Intergovernmental Cooperation: Nothing in this Consti-
4 tution shall be construed to prohibit: (1) The coopera-
5 tion of the government of this State with any other
6 governments; or (2) With the approval of the General
7 Assembly by law, the cooperation of the government of any
8 county or other civil division with any one or more other
9 governments outside the boundaries of the State in the
10 administration of their functions and powers.

11 By this Article we attempt to insure that there
12 is no State constitutional obstacles to cooperation be-
13 tween the State and its civil divisions and other States,
14 their subdivisions or the Federal government, other than
15 as may be included in the compact clause of the Federal
16 Constitution.

17 We feel that this Article should be in the
18 Constitution. It may serve no other purpose than to point
19 up a very important medium by which the solution to prob-
20 lems which transcend the boundaries of the State and politi-
21 cal subdivisions can be solved. It points up a method of

[illegible]

1 of cooperation, and would remove any obstacles where
2 persons may feel that by reason of no specific provision
3 there are obstacles, which would mean nothing more than
4 time delay for opinion by appropriate authority, et
5 cetera.

6 We feel that it is important to include it in
7 the Constitution and therefore submit the Article as re-
8 vised.

9 THE CHAIRMAN: Any questions?

10 Mr. Sayre?

11 MR. SAYRE: Just on government here. Shouldn't
12 the "s" be deleted?

13 THE CHAIRMAN: Where?

14 MR. SAYRE: In sentence one, the cooperation
15 of the government of this State with any other government.

16 THE CHAIRMAN: Do you accept it, Mr. Clagett?

17 MR. CLAGETT: I can't see the difference.

18 MR. SAYRE: It is just English.

19 THE CHAIRMAN: Singular.

20 MR. CLAGETT: I would yield to better authority
21 than my own.

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1 THE CHAIRMAN: In the absence of objection we
2 strike the "s" from the last word of Section 1.

3 DR. BARD: Why don't you get rid of the "any"?

4 THE CHAIRMAN: Can we leave that to the Com-
5 mittee on Style?

6 DR. BARD: I think so.

7 THE CHAIRMAN: Any other question?

8 MR. CASE: Is the word, cooperation, a word
9 of art?

10 THE CHAIRMAN: Mr. Clagett?

11 MR. CLAGETT: No, it is really meant to be
12 and to carry with it just what it would normally purport
13 to mean and carry with it. This is a revision and we
14 mean it actually just to carry the normal connotation
15 of cooperation.

16 MR. CASE: Does it mean contract, for example?

17 MR. CLAGETT: Yes, it could mean contract.

18 MR. CASE: As you used it?

19 MR. CLAGETT: As we used it. It means subject
20 to the contract clause of the Federal Constitution.

21 MR. CASE: Are you borrowing trouble here by

[illegible]

1 not saying what you mean? I think it could be contended
2 with some degree of persuasiveness that cooperation is
3 less than contract with or agree with in writing or some-
4 thing of that nature.

5 JUDGE ADKINS: The word, voluntary.

6 MR. CASE: That is right.

7 MR. SAYRE: The model uses the word cooperation
8 so to some degree I would think it is a word of art.

9 MR. CLAGETT: The model does point out that it
10 is inconceivable that there would be anything in the Con-
11 stitution even as drawn by them that would prohibit what
12 is contemplated here, and what is contemplated here is a
13 method of voluntarily getting together and solving prob-
14 lems. Now, if consistent with that effort, it results in
15 an agreement or contract, I would say that you still have
16 the Federal restrictions to meet, and if none are violated
17 there, then there would be nothing to prohibit that type
18 of result.

19 THE CHAIRMAN: Mr. Clagett, isn't the use of
20 the word cooperation, in the model, and in the literature
21 generally discussing authorities of various sorts and intra-

[illegible]

1 state and interstate cooperation deliberately used to keep
2 away from the notion of compact?

3 MR. CLAGETT: I think that that would probably be
4 logical, because in each of those, they say, and agree,
5 and by the second phrase is meant specifically contract,
6 compact or agreement.

7 THE CHAIRMAN: Is your Committee meaning to
8 keep away from this, or are you meaning specifically to
9 go far enough to authorize civil division to make compacts
10 with other governments, if the General Assembly approves?

11 MR. CLAGETT: If the General Assembly approves,
12 and as I stated before, by the voluntary approach an
13 agreement is arrived at, we would not prohibit them from
14 entering into that agreement.

15 THE CHAIRMAN: So that you really mean to go
16 the step further and to talk in terms of compact and not
17 merely cooperation?

18 MR. CLAGETT: Yes, we do, provided that you
19 don't violate the compact laws of the Federal Constitution
20 and any restrictions that the State by general law or by
21 specific action upon a particular problem might impose.

[illegible]

1 THE CHAIRMAN: Mr. Gentry?

2 MR. GENTRY: I don't know whether it helps or
3 opens up another area, but in 11.06, intrastate, we
4 talked about for the joint administration of any
5 functions, and powers and sharing of costs thereof.
6 I assume what we meant, there was cooperation as well.

7 MR. CLAGETT: Well, what was meant there,
8 cooperation and agreement; there specifically we did in-
9 clude the idea of entering into agreements and contracts
10 between the local subdivisions. That is, intrastate
11 subdivisions.

12 MR. GENTRY: It didn't say contract or agree-
13 ment.

14 MR. CLAGETT: No. That is why I can't rule it
15 out insofar as you asking me to interpret the word, co-
16 operation, but as pointed out earlier, the model uses
17 the word cooperation, and then does include after it,
18 and either into agreements, et cetera. Consequently, I
19 think that what we want to emphasize here is a voluntary
20 means of approach to solve the problems, but we do not
21 mean to prohibit agreement that might result in that

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1 voluntary approach.

2 THE CHAIRMAN: Mr. Sayre?

3 MR. SAYRE: I have a question that you raised,
4 and we can put it on the table. You indicated that the
5 very thing that is in the model Constitution is something
6 that we are now having perhaps second thoughts about, and
7 I would like to know the reasons for those second thoughts;
8 why it is bad for a County of one State to be able to
9 negotiate directly with a County of another State.

10 THE CHAIRMAN: I don't suggest it is bad. I
11 suggest that in the light that you are discussing this
12 subject, and in the model Constitution, an effort has
13 been made to avoid going that far because some people
14 think that the County of one State ought not to be able
15 to enter into a compact with a County of the other State.
16 I think the suggestion has been made that cooperation
17 between Counties of five States can be on some degree a
18 little lower level than a contract, but I understand the
19 Committee's position to be that it recommends that we
20 go the whole step, that we authorize contracts.

21 MR. SAYRE: Let's assume that we do go the

[illegible]

1 whole way. Why would that be bad?

2 THE CHAIRMAN: I don't say it would.

3 MR. SAYRE: I see. I thought you indicated
4 there were some writings or something that indicated
5 this might not have been desirable, and I was seeking
6 the answer.

7 THE CHAIRMAN: I think I can answer you there.
8 There are some people who feel that interstate compacts
9 should be negotiated and entered into only at the State
10 level and not at the local level, local government level.

11 MR. SAYRE: For what reason?

12 THE CHAIRMAN: I don't think that I could
13 expound on that for you.

14 DR. BARD: The State is ultimately responsible.

15 MR. CLAGETT: Let's bring this down to specifics.
16 If the City of Washington and the Counties of Montgomery
17 and Prince Georges want to control air pollution because
18 of the operation of a concrete plant in either one of
19 the Counties, that is flowing over into the City, we feel
20 that they should be able to get together and solve that
21 problem. Now, I do point out to you that by the method

[illegible]

1 which we are approaching this thing, it would be with the
2 approval of the General Assembly law, and it would be, I
3 think, a means whereby the criticism just mentioned would
4 be satisfied.

5 MR. SAYRE: One thing I would like to raise as
6 a possibility here, so as to allow more freedom, in
7 Section 11.03 we allow a County to do anything not otherwise
8 denied by the Constitution, public general law or its
9 charter. We refer to civil divisions. If we were to
10 confine the activity of a governmental jurisdiction -- if
11 we made it so that only a representative government could
12 cross State lines in its negotiations, unless denied by
13 public general law or the State Legislature, I wonder
14 if this might not be a neat compromise so that you would
15 have at least a responsible body instead of an authority
16 that would have such a power.

17 THE CHAIRMAN: I think you are getting into
18 complications rather than the reverse. May I make this
19 suggestion, not by way of enforcing it particularly, but
20 just seeking to see if this is what the Committee intends.
21 If you added at the end of Section 1, and also of Section

1 2, a phrase, such as, and the entering into contracts or
2 compacts with respect thereto, would this be what the
3 Committee is intending to recommend? Section 1 would
4 then read, The cooperation of the government of this State
5 with any other government, and the entering into contracts
6 or compacts with respect thereto.

7 MR. CLAGETT: Yes, that is our intent, and I
8 think you can boil that down to the simple phrase, and
9 agreements relative thereto.

10 THE CHAIRMAN: Mr. Case?

11 MR. CASE: Mr. Chairman, I think this might
12 conceivably be a dangerous thing, particularly number two,
13 which deals, as I understand with, let's say, the City
14 of Rockville, cooperating with Montgomery County, or with
15 Washington Suburban Sanitary Commission. Just as a mat-
16 ter of background, I would think that Mr. Sayre is right
17 on this, that if you grant a full measure of authority to
18 the Counties, this ought to take care of it, without more,
19 and by providing you have to get the General Assembly to
20 agree on this, I think you are pretty restrictive on the
21 local subdivisions. A case in point: The Washington

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1 Suburban Sanitary Commission today has a very elaborate,
2 intricate agreement with the District of Columbia for
3 the receipt by the District and treatment of sewerage,
4 because all of the sewerage in the Washington Metropolitan
5 Area is handled at the District of Columbia Blue Plains
6 Plant on the Potomac River. To complicate the matter
7 further, the City of Rockville has two very intricate
8 contracts with the Washington Suburban Sanitary Commission,
9 which in turn refer by reference and incorporate by
10 reference the contract which the Washington Suburban
11 Sanitary Commission has with the District of Columbia.
12 Now, it is hard enough to work out these agreements with
13 the various political agencies involved, and I have some
14 knowledgeability of this because I have negotiated, have
15 been for a year negotiating one of these contracts,
16 but certainly nobody has ever thought, and this is the
17 first time it has ever occurred to me, that the City of
18 Rockville, for example, could not contract with Washing-
19 ton Suburban Sanitary Commission and/or the District of
20 Columbia for this purpose, and I submit to you that to
21 provide, as this would seem to provide, that after you

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1 get the contract made, you have to go and get it approved
2 by the General Assembly, opens up all kinds of Pandora's
3 boxes, and I think it would be very inadvisable from the
4 standpoint of those political subdivisions.

5 THE CHAIRMAN: I take it your question, if I
6 follow this, is not with respect to the authorization to
7 both the State and the Counties here, but simply to the
8 qualification in Section 2 that it must be with the
9 approval of the General Assembly.

10 MR. CASE: That is right. I go further and say
11 I really don't think you need anything in here because
12 with their inherent powers as political entities, it
13 seems to me they have the right to make contracts.

14 MR. CLAGETT: I would like to answer that
15 before we get away from it, because I think there may be
16 a slight misreading here. Approval would only be required
17 when you are dealing with agreements outside the boundaries
18 of the State. Now, assuming that that is what you meant,
19 we do feel that the General Assembly could take care of
20 it very easily by a proper general statute, and this,
21 again, is not pointing up and giving any additional power.

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1 I think we are aware of the fact that really, if anything,
2 it imposes a degree of restriction.

3 MR. CASE: It does.

4 MR. CLAGETT: It does. That is true. Because
5 of the fact that we want to emphasize this type of ap-
6 proach to the solution of urban problems, which are
7 becoming ever more complex and multiple, we felt that
8 this language should be here, and it should be specific-
9 ally here in order that there not be any restrictions
10 insofar as the use of it is concerned, whereas even though
11 the broad grant of power is there insofar as the Counties
12 are concerned, there still might arise questions and
13 hesitancy about using it in dealing with other governments
14 interstate.

15 MR. CASE: What worries me about this, Hal, is
16 that it could conceivably be interpreted to require that
17 each contract or agreement that is made would require
18 legislative approval.

19 MR. CLAGETT: And that was one of the factors
20 that we considered at the time and are aware of, but we
21 thought that nevertheless that was not too undesirable,

[illegible]

1 because of the fact that the General Assembly, if it
2 became a restriction, could take care of it.

3 MR. CASE: I can tell you right now as a prac-
4 tical matter, it would be very undesirable in your
5 locality, because you have got a myriad of things which
6 Washington Suburban Sanitary Commission contract with the
7 District of Columbia on -- trash removal is another.
8 There are places where it does this. The Washington
9 Sanitary Suburban Commission Act gives in of itself a
10 broad grant of authority to permit Washington Sanitary
11 Suburban Commission to contract with the District of
12 Columbia, but we don't have to go back to the Legislature
13 each time we make one of these contracts. This I am
14 afraid would require that to be done. I think this
15 would be very bad.

16 MR. CLAGETT: I might point out this could
17 be, this language could make such requirement, but it also
18 could do the other way.

19 THE CHAIRMAN: Mr. Clagett, let me ask a ques-
20 tion for clarification. What provision of the proposed
21 Constitution or provisions give rise to any doubt of the

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1 power of the State to contract?

2 MR. CLAGETT: None.

3 THE CHAIRMAN: What provisions of the proposed
4 Constitution would give any doubt as to, give rise to
5 any doubt as to the power of the Counties or other local
6 subdivisions to enter into contracts?

7 MR. CLAGETT: None.

8 THE CHAIRMAN: Mr. Haile?

9 MR. HAILE: I understand this from a historical
10 framework. The courts have held that the powers of political
11 subdivisions rest on those powers which are expressly
12 given to them by the State, and therefore have on occasion
13 struck down agreements.

14 THE CHAIRMAN: Yes, but that is under a concept
15 quite the reverse of what we are talking about, so far as
16 Counties are concerned at least.

17 MR. HAILE: My support of this is to clarify
18 that and to advise the courts that there is nothing in
19 our Constitution, if this is adopted --

20 MR. CLAGETT: I would like to emphasize --

21 THE CHAIRMAN: Let Mr. Haile finish.

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1 MR. HAILE: -- that under this concept these
2 subdivisions do have power to contract even though it is
3 not specifically mentioned one way or the other in our
4 Constitution. It is to the reverse, the judicial trend.

5 THE CHAIRMAN: Conversely to what I just said,
6 if regional governments are created, they would be by
7 express power rather than by the reserve power method
8 such as we provide for the Counties.

9 MR. HAILE: There wouldn't have to be an ex-
10 press power to contract if this is part of the Constitu-
11 tion.

12 THE CHAIRMAN: Mr. Clagett?

13 MR. CLAGETT: I would like to emphasize exact-
14 ly what Mr. Haile has said, and that in doing so,
15 emphasize the answers that I have just given to your two
16 previous questions, because by this provision we clarify
17 the avenue rather than raise such questions, which might
18 take a considerable amount of time and study to answer.

19 THE CHAIRMAN: Mr. Sayre?

20 MR. SAYRE: The commentary in the model says
21 that it is believed that the presence of this kind of

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1 Article, referring to different language now, will serve
2 the useful purpose of stressing intergovernmental coopera-
3 tion, which appears to offer the best means of solving
4 the increasingly difficult urban problems straddling
5 political boundary lines.

6 In other words, they said that this Article
7 is not necessary, but it would serve as a guideline.

8 Here, if we left this present language out
9 altogether, it still does not prevent the Legislature
10 from enacting through its inherent power restrictions
11 upon the Counties, as I understand it. Isn't that true?

12 MR. CLAGETT: That is correct.

13 THE CHAIRMAN: So I don't see why we have to
14 have language at all on this point unless we wanted to
15 have a positive note on cooperation. To me, this is a
16 negative note.

17 I would like to ask along that line another
18 question, Mr. Clagett, or Mr. Howard. In many respects
19 the use of the District of Columbia as an example is
20 confusing to me because you don't have to take into con-
21 sideration the compact clause of the Federal Constitution,

[illegible]

1 but thinking instead of another State, Virginia,
2 Pennsylvania, Delaware, any of them, can you tell us, would
3 there be any question under the Federal Constitution as
4 to the right of a County in Maryland to enter into a
5 contract or compact with a County of Pennsylvania or
6 Delaware, for instance? Is this a compact between States
7 under the compact clause of the Federal Constitution?

8 MR. CLAGETT: Frankly, I don't know the answer.

9 MR. HOWARD: I have not had an opportunity to
10 look into that.

11 MR. CLAGETT: Do you know, Dr. Burdette?

12 DR. BURDETTE: No. I know the Appalachian
13 Commission people tell me they are now doing things that
14 a few years ago would have been thought to require a
15 compact, but I don't know more than that.

16 THE CHAIRMAN: Mr. Della?

17 MR. DELLA: In the compact that we worked out
18 between Virginia, the District of Columbia and Maryland
19 on the mass transit system, that had to come before the
20 General Assembly; both Virginia and also Maryland, and
21 with the Congressional District and the District of

[illegible]

1 Columbia area to approve.

2 THE CHAIRMAN: The difficulty is you are talk-
3 ing about the District of Columbia which isn't a State.

4 MR. DELLA: I was thinking in this term,
5 though, because it only encompassed a couple of Counties
6 in Maryland, and the Tenth District of Virginia in Vir-
7 ginia. They still had to go before the General Assembly
8 in those States. I would assume that this same provision
9 would apply if you were going to work out a compact
10 between Maryland and Hagerstown area with Chambersburg
11 and Pennsylvania, wouldn't it?

12 THE CHAIRMAN: I would think there are dif-
13 ferences such as Mr. Haile pointed out.

14 Any further discussion?

15 MR. CASE: Mr. Chairman, if this is merely to
16 be declaratory, to strengthen the right of cooperation,
17 and since I am genuinely disturbed by this business about
18 the approval of the General Assembly, for reasons I have
19 just stated, because I think that is a limiting effect
20 rather than just a declaratory effect in the right of
21 Counties to cooperate among themselves, I would move that

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1 the words, with the approval of the General Assembly by
2 law, be eliminated from Subsection (2).

3 MR. HAILE: I would second that.

4 MR. CLAGETT: I would very heartily agree
5 with that, but I don't know that that complies with the
6 resolution that I read, that was passed back on the
7 September 20 meeting. I would concur with that.

8 THE CHAIRMAN: Again, as a matter of informa-
9 tion rather than suggestion, because I have no feeling
10 about this, would it be better to do as suggested or
11 instead of that, to do that, but add to the opening phrase,
12 after the word, prohibit, the phrase, such as, in such
13 manner as may be provided by law.

14 MR. DELLA: That would be better.

15 THE CHAIRMAN: Nothing in this Constitution
16 shall be construed to prohibit, in such manner as may be
17 provided by law, the cooperation of the government, et
18 cetera.

19 MR. CASE: I don't understand. What does that
20 add?

21 MR. CLAGETT: I think that is putting

[illegible]

1 the restriction back in that we were trying to take out.

2 THE CHAIRMAN: What I was thinking, suppose the
3 General Assembly wants to pass a general law forbidding
4 Counties of Maryland from entering into contractual arrange-
5 ments with Counties of another State.

6 MR. CLAGETT: It could do so now under a
7 general public law.

8 THE CHAIRMAN: Yes, but if you put this pro-
9 vision in, are you throwing doubt on the power of the
10 General Assembly to enact prohibitory legislation?

11 MR. CLAGETT: No.

12 MR. CASE: I wouldn't think so.

13 THE CHAIRMAN: All right.

14 JUDGE ADKINS: Mr. Chairman, in view of the
15 answer to your earlier two direct questions, whether or
16 not there was anything in the Constitution which cast
17 any doubt on this power, the answer was no, why do we
18 confuse what appears to be a clear situation with this
19 language, which in my judgment can only serve to cloud
20 the issue? Why do we --

21 MR. CASE: Just for emphasis. That is the

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1 answer, merely to emphasize that they can do it.

2 MR. CLAGETT: I might point out that many,
3 many persons do have questions, and it is in order to
4 remove those questions and use this as a means of approach
5 that we want it in here, and we had the benefit of the
6 model and its comment already made available to us and
7 Dean Fordham of the Pennsylvania Law School was specificall-
8 ly interrogated by the Committee when he appeared before
9 it with respect to this and strongly recommended that
10 notwithstanding the objections that have been raised here,
11 such as that there is nothing in the Constitution else-
12 where that would prohibit it, nevertheless it is desirable
13 to include it and remove the questions which might arise.

14 JUDGE ADKINS: I think the questions which are
15 likely to arise, not constitutional but inherent of the
16 powers in local subdivisions, irrespective of constitu-
17 tional, if that is the existing problem, you are not help-
18 ing that with this language. It seems to me you are
19 beating a dead horse with this language. If you want to
20 be helpful in the situation, would not it be better to
21 turn it around and state positively that they shall have

1 these powers, which clarifies then the local, the prob-
2 lems arising extra in the Constitution, as well as those
3 under the Constitution?

4 MR. CLAGETT: That is why I would heartily
5 agree to the removal of the first phrase in Subsection
6 (2), and simply have --

7 JUDGE ADKINS: That doesn't answer my question.
8 My problem is related to the very introductory language
9 there, nothing in this Constitution shall be construed
10 to prohibit. All that says is that it may be somewhere
11 else, but there is nothing in this document.

12 MR. MARTINEAU: If we said it, we didn't mean
13 it.

14 JUDGE ADKINS: Yes. I don't know a thing
15 about this field. If the problems arise, as I sense they
16 do from this discussion outside of the Constitution, and
17 in the area of municipal, right of municipalities to
18 contract, if you want to remove that doubt, then you had
19 better state it positively. If you are not trying to
20 effect that doubt, then why state it at all? That is
21 my point.

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1 MR. CLAGETT: I might give this reply. With
2 respect to the municipalities we have taken care of that
3 insofar as the control over the municipalities by the
4 Counties, so the Counties could by law restrict the
5 municipalities if they saw fit to do so.

6 MR. SAYRE: Is that really clear, that they
7 could? Take Rockville. Could Montgomery County restrict
8 Rockville right now?

9 MR. CLAGETT: It could not abrogate any of
10 its existing powers without its consent or the consent
11 of the General Assembly. The answer to that is a
12 double one.

13 MR. SAYRE: But let's take ten years from now,
14 Rockville is a viable municipal government. It has neither
15 annexed property nor changed any of its powers.

16 THE CHAIRMAN: The answer is the same. If it
17 has the power when the Constitution goes into effect,
18 it can't be taken away without its consent or that of
19 the General Assembly. If it doesn't have the power, then
20 it can be restricted.

21 MR. SAYRE: That is my understanding. Here is

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1 one that would have the power.

2 THE CHAIRMAN: I don't know whether it does or
3 it doesn't.

4 MR. CASE: I hope it does.

5 MR. CLAGETT: I think it does. It has used
6 it, so it must have it.

7 THE CHAIRMAN: Mr. Gentry?

8 MR. GENTRY: Speaking in favor of deletion of
9 the complete Article here, I point out that as to number
10 one, there certainly is no question that the State has the
11 sovereign power, has all power necessary to contract with
12 another State, under our present Constitution, with regard
13 to the Potomac River compact and the others. As to
14 number two, whether you hedge that in the opening phrase
15 or down in Section 2, with approval of the General Assem-
16 bly, there you are asking the General Assembly to pass
17 special legislation which would take it away somewhere
18 else unless you do it by some prior general statute, which
19 would just give a blanket authority, and would have no
20 relation to a specific case and a specific contract, so
21 I think you have defeated the purpose of helping the

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1 General Assembly to Statewide act by hedging this number
2 two, and with the hedge, you might just as well leave it
3 out because they have that authority by reason of giving
4 the full powers unless taken away, otherwise taken away.
5 You have given that already to localities.

6 THE CHAIRMAN: Dr. Michener?

7 DR. MICHENER: Nothing any more.

8 THE CHAIRMAN: There seem to be three possible
9 points of view, one, that expressed in the document as it
10 stands now, the other, that expressed in the motion, that
11 is, to adopt the document but without the qualifying
12 phrase in Section 2; thirdly, to rephrase the whole
13 Section in terms of an affirmative grant of power.

14 I will rule that the pending motion --

15 MR. MARTINEAU: Isn't there another one?

16 DR. BARD: Leave it out entirely.

17 THE CHAIRMAN: I thought I did mention that,
18 but certainly, I will rule that this motion goes only to
19 the question of deleting this phrase, and anyone desiring
20 to move after that, either to amend, to cast it in an
21 affirmative language or to delete entirely, we can submit

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1 that as a separate motion. Are you ready for the ques-
2 tion?

3 DR. BARD: Yes.

4 THE CHAIRMAN: The question arises on the
5 deletion from Section 2, or Subsection 2, the beginning
6 phrase, with the approval of the General Assembly by law.
7 A vote Aye is a vote in favor of the deletion of that
8 phrase. It is not necessarily a vote in favor of the
9 approval of the Section as then changed. Are you ready
10 for the question? All those in favor, signify by saying
11 Aye. Contrary; no. The Ayes have it unanimously, so
12 the phrase is deleted.

13 Now, I will recognize anyone to make a motion.
14 Mrs. Bothe?

15 MRS. BOTHE: I move deletion of the entire
16 Section.

17 MR. GENTRY: Second.

18 THE CHAIRMAN: Any further discussion?

19 Mr. Clagett?

20 MR. CLAGETT: Mr. Chairman, I would again urge
21 very strongly that this motion be defeated, because this

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1 action of your Committee is being taken after considerable
2 time devoted to consideration of the question, and along
3 that line, appreciating the importance of having a clear-
4 cut statement that nothing in this Constitution shall be
5 construed to prohibit cooperation.

6 Now, the whole of our discussion has been what
7 does, and we have answered that as far as we know, there
8 is no restriction in the Constitution, but we have been
9 working on this very document for a year and a half to
10 arrive at that answer.

11 What we are trying to do here to to give a
12 guide and a quick guide to legislators who will be acting
13 in this area and here they can go to the document, they
14 can find the clear language, they can then go ahead and
15 act, without any further question or delay.

16 It has also been strongly urged by eminent
17 authority that this is a useful device to clarify and is
18 one which should be in the Constitution, so we would
19 strongly urge that it be included. It is not going to do
20 any damage, and it could do good.

21 MR. SAYRE: Mr. Chairman?

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1 THE CHAIRMAN: Mr. Sayre.

2 MR. SAYRE: The motion was to delete this Sec-
3 tion or this Article. I wonder if the maker of the
4 motion would say to delete all this language, and then we
5 could discuss any other language.

6 THE CHAIRMAN: I will rule that the vote on
7 this motion does not preclude a motion to recast the
8 Section in affirmative language, as Judge Adkins suggested
9 or any other substitute. At the moment, the question is
10 merely to delete this particular Section.

11 MRS. BOTHE: The intention of the motion was
12 the subject matter rather than the wording. I will leave
13 it to the Chairman what the effect of the vote would be.

14 THE CHAIRMAN: If we are going to proceed
15 according to parliamentary procedure, we would have to
16 consider motions to amend. I was merely trying to save
17 time. I have no idea whether anyone desires to move to
18 recast the language in affirmative form. Judge Adkins,
19 did you have in mind doing so?

20 JUDGE ADKINS: No, sir, not if this motion
21 prevails.

1 THE CHAIRMAN: Did you, Mr. Sayre?

2 MR. SAYRE: I thought that I would, on the
3 positive, yes.

4 THE CHAIRMAN: To do what?

5 MR. SAYRE: Move this whole Section more in
6 line with what the model Constitution says.

7 THE CHAIRMAN: That is a little too vague,
8 to do what?

9 MR. SAYRE: You mean specific wording?

10 THE CHAIRMAN: Not specific wording necessarily.

11 MR. SAYRE: To say nothing in this Article and
12 then, let's see, we have taken out the negative aspect of
13 this. What I wanted to do was confine this action,
14 except on existing cities, or municipalities, to any type
15 of inter or intrastate cooperation agreements.

16 THE CHAIRMAN: This Section doesn't deal with
17 intrastate action. This is only interstate action.

18 MR. SAYRE: Yes, this is what I was going to
19 put in, both those, inter and intra.

20 THE CHAIRMAN: I am lost. You want to make a
21 motion as a substitute, and then maybe I will follow what

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1 you have in mind.

2 MR. SAYRE: Something of that wording was in
3 the previous motion that was tabled.

4 MR. CLAGETT: I think maybe I can answer this.
5 We have taken care of the intrastate in the separate
6 provision in Section 11.07 of Article XI, so we are
7 not concerned with that aspect of it. This is simply
8 the intergovernmental cooperation, and it is so closely
9 allied with the spirit of the model Constitution, although
10 it is less positive and less definitive. I would suggest
11 that since we want to accomplish something rather than
12 lose the whole hog, we had better let a vote stand Yes or
13 No, and hope we get a Yes.

14 THE CHAIRMAN: All right.

15 Dr. Bard?

16 DR. BARD: I think there is value at this time
17 in the history of the country to set forth the declaratory
18 statement, which does give encouragement to intergovern-
19 mental cooperation, and this statement does do it. I,
20 personally, would like to see the wording recast, but I
21 want to see this kind of a statement set forth here.

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1 THE CHAIRMAN: Mrs. Bothe?

2 MRS. BOTH: I would suggest that if we do want
3 to do this, we ought to put it someplace up in the
4 Preamble and leave it out of the body, because this kind
5 of expression of what is supposed to be obvious, as
6 advocated by the model, I think is extraordinarily dan-
7 gerous and inappropriate. It would be well and good,
8 perhaps, if Mr. Clagett's statement were true, that this
9 were merely a declaration which would do no harm and
10 perhaps encourage the cooperation we all want. I don't
11 think the statement is accurate. We have had to knock
12 one part of it out already, and I can see innumerable
13 others arising. A silence is probably the best, will
14 probably do more to promote cooperation here in this
15 Section.

16 MR. CLAGETT: I have always found it a rather
17 effective way of solving something, when you are backing
18 up against the wall, ask the other side where there is
19 anything that is in this language that would justify any
20 of these fears and specifically, what?

21 MRS. BOTHE: The very fact it has to be put

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1 in whenever one would otherwise assume it inherent might
2 flag it as -- the idea that it is perhaps necessary to
3 have this language, and I am sure the generations to come
4 may not recall that we only put it here for window
5 dressing.

6 MR. CLAGETT: I direct your attention to the
7 language itself and again ask the same question, how
8 could they possibly misinterpret what it says here.

9 MRS. BOTHE: I think they might well ask why
10 it is here at all and in the very act of doing so, re-
11 quire some court to tell them where the cooperation that
12 it encourages could have been proceeded with without in-
13 struction that it asks for.

14 THE CHAIRMAN: Any further discussion?

15 Mr. Bond?

16 MR. BOND: I just question the fact that a
17 County within the State of Maryland can enter into a com-
18 pact with another County over in Pennsylvania or Virginia,
19 without anything being in the Constitution. I haven't
20 been satisfied on that point.

21 THE CHAIRMAN: Any further discussion?

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1 Dr. Burdette?

2 DR. BURDETTE: Mr. Bond's remark, if I may
3 interpret it correctly, that he would feel that the Con-
4 stitution must have some kind of language like this, if
5 the County is to have such power. Out of the same
6 thinking, not so well expressed as he could have been
7 inclined to vote against the motion and to keep the
8 language in, but the only caveat I have on that, the Chair
9 has, I think, raised the same question, but seemed to
10 be persuaded by other answers. I would like to raise it
11 again. I would just like to be sure that there is nothing
12 in the first part of it, in this language, the single
13 phrase, nothing in this Constitution shall be construed
14 to prohibit, that the Court of Appeals or later to be
15 called the Supreme Court, would not get into the position
16 of saying that the General Assembly can in no way inter-
17 fere with the cooperation of the government of the State,
18 or in no way interfere with the cooperation of the
19 government of any County, et cetera. That one would
20 bother me a whole lot.

21 THE CHAIRMAN: I was going to comment on that,

1 Dr. Burdette, in stating my own views, which I didn't want
2 to do until the rest of the debate had finished. Maybe
3 I can do it now and clarify it.

4 MR. CASE: Why don't you rule the debate is
5 finished? I think that is a very salutary ruling.

6 MR. SAYRE: There was a question I wanted to
7 ask before your comments, to see if it has been answered.

8 THE CHAIRMAN: I think this kind of provision
9 is clearly at odds with everything we have been trying
10 to do in the Constitution. Nevertheless, I personally
11 am persuaded that in this area where it is going to
12 become so absolutely essential, that solutions to metro-
13 politan problems that don't limit themselves to State
14 and County lines, be worked out, that there is a purpose
15 to be served in having the Constitution give its blessing
16 to such things, at least to the extent of indicating
17 quite clearly that there is no intention at all to restrict
18 or prohibit. I still have in my own mind the doubt that
19 gave rise to my earlier question, and I think that I would
20 hesitate to see the Section stay as it is now without
21 some phrase being added to make it abundantly clear that

1 the General Assembly, by general law, could regulate
2 the power of the political subdivisions to enter into
3 interstate compacts.

4 I would think that without this provision that
5 right would be clear under the power to, by general law,
6 restrict the powers granted to political subdivision,
7 but when you then say in this Section that nothing in this
8 Constitution shall be construed to prohibit the coopera-
9 tion of any County with another State, I am concerned that
10 that overrides the other provision.

11 I would announce that a vote on this motion,
12 which is a motion to delete, if it fails, does not
13 necessarily mean approval of the Section as presently
14 phrased, and the matter would then be before the Commis-
15 sion for further amendment, but in view of the statements
16 that no one has any different kind of a substitute to
17 offer than that, I would also rule that if the motion to
18 delete carries, that it means that there should be no
19 provision on the subject at all in the Constitution.

20 Is there any objection to that procedure?

21 Judge Adkins?

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1 JUDGE ADKINS: No objection, except that may
2 I change my mind and offer a substitute motion, or would
3 you prefer that I hold it?

4 THE CHAIRMAN: I don't care. Go ahead.

5 MR. CLAGETT: I would like to hear it.

6 JUDGE ADKINS: I would propose the first sen-
7 tence of the Section be amended to read as follows: This
8 Constitution shall be construed to permit, unless other-
9 wise prohibited by law;

10 Paragraph 1 and the rest of the sentence, or
11 the rest of the Section, as it is.

12 MR. CLAGETT: I think that is a very good
13 suggestion. I think that is getting very close. It re-
14 moves the contradiction, or it removes the possible in-
15 consistency that Dr. Burdette has raised and which you
16 have raised.

17 DR. BARD: Will you state that again, please?

18 JUDGE ADKINS: This Constitution shall be
19 construed to permit, unless otherwise prohibited by law:
20 Paragraph 1.

21 THE CHAIRMAN: Could I suggest one thing? I

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1 still have one little worry gnawing at my mind, unless
2 and to the extent otherwise prohibited by law. I just
3 didn't want the idea that the law would have to say
4 you can or you can't, but it could lay down guidelines.

5 MR. CLAGETT: Let me hear that again.

6 THE CHAIRMAN: This Constitution shall be con-
7 strued to permit, and unless and to the extent otherwise
8 prohibited by law, 1 and 2. Is that right, Judge Adkins?

9 JUDGE ADKINS: Yes.

10 THE CHAIRMAN: Mrs. Bothe, do you accept the
11 amendment?

12 MRS. BOTHE: I would like a vote on the issue.
13 I still feel it clouds it.

14 THE CHAIRMAN: Is there a second?

15 MR. SAYRE: Yes.

16 THE CHAIRMAN: Then the question will arise
17 on the motion to substitute.

18 Mr. Gentry?

19 MR. GENTRY: May I call your attention to
20 Section 11.06, which says exactly what we are driving at,
21 but it is intrastate, and couldn't you say, or any other

1 State or the Counties thereof, and put it right into
2 11.06, and eliminate this?

3 THE CHAIRMAN: What is the language you are
4 referring to?

5 MR. GENTRY: It reads, any County, other, may
6 except to the extent prohibited by law, agree with the
7 State, or any other State, or County, civil division or
8 municipal corporation thereof, for the joint administra-
9 tion of any of their functions and powers and the sharing
10 of costs thereof, and title it, intra and interstate
11 intergovernmental agreements.

12 MR. CLAGETT: The Committee has considered
13 that possibility, and decided against that approach. We
14 would like to have the intrastate clear and all right
15 where it is and the interstate given an emphasis by being
16 a separate Article. In lieu of getting nothing in there,
17 I suppose we would have to compromise back because what
18 you are saying was the original position of the Committee,
19 and then abandon in part by the action of the Commission
20 when considering it, and later further consideration by
21 the Committee, but I would rather hold to the change of

1 language offered by Judge Adkins, because I think that
2 gets to the intent and an expression of the effort of
3 the Committee, what we would like to do.

4 THE CHAIRMAN: All right. Is there any further
5 discussion of the substitute? The question will arise
6 then on the substitution for the pending motion of a
7 motion to approve this Section, but amend the first sen-
8 tence to read, this Constitution shall be construed to
9 permit, and except to the extent otherwise prohibited by
10 law, 1 and 2.

11 MR. HAILE: I think you omitted the word,
12 unless.

13 DR. MICHENER: Why couldn't you say, except to
14 the extent prohibited by law?

15 THE CHAIRMAN: Without trying to phrase it
16 exactly, let me state the first sentence again: This
17 Constitution shall be construed to permit, and unless
18 and except to the extent otherwise prohibited by law,
19 1 and 2. A vote Aye is a vote to substitute that motion
20 for the pending motion. Are you ready for the question?
21 All in favor of the substitution of that motion for the

[illegible]

1 pending motion, signify by a show of hands.

2 MR. BROOKS: Thirteen.

3 THE CHAIRMAN: Contrary? The motion carries,
4 13 to 2. The question now arises on the substitute
5 motion. Is there any further discussion?

6 MR. SAYRE: How does Line 1 read?

7 THE CHAIRMAN: This Constitution shall be con-
8 strued to permit, and unless and except to the extent other-
9 wise prohibited by law, 1 and 2.

10 MR. SAYRE: It is 1 I want.

11 THE CHAIRMAN: One is as typed on the paper.

12 MR. SAYRE: I thought we had something, and
13 other agreements, or the word, agreement, or something
14 added in there?

15 THE CHAIRMAN: No, just as typed.

16 DR. BURDETTE: Except with the approval of the
17 General Assembly.

18 THE CHAIRMAN: Out of 2, we have already de-
19 leted the phrase, with the approval of the General Assembly
20 by law.

21 MR. SAYRE: I thought Mr. Clagett introduced

1 a word, and agreements or something to that effect?

2 THE CHAIRMAN: No, discussion, but no motion
3 to amend the language.

4 MR. SAYRE: Was there a cloud as to what
5 cooperation meant here?

6 THE CHAIRMAN: We discussed it for about 20
7 minutes, but whether there was a cloud, you would have
8 to decide.

9 MR. SAYRE: I thought that there was in most
10 of the people's minds, unless we had it.

11 MR. CLAGETT: No.

12 THE CHAIRMAN: Are you ready for the question?

13 MR. BROOKS: Just one additional suggestion:
14 That first line might read, this Constitution shall permit
15 except to the extent prohibited by law, 1 and 2.

16 THE CHAIRMAN: That becomes a stylistic change.
17 You mean, shall be construed. I would assume that the
18 Committee on Style could do that, or unless there is ob-
19 jection, we can use that language. Do you want to use
20 that?

21 JUDGE ADKINS: Perfectly all right with me,

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1 Mr. Chairman.

2 THE CHAIRMAN: The question arises on the
3 motion to approve this Section, except that the first
4 clause shall read, this Constitution shall permit --

5 MR. BROOKS: Except to the extent prohibited
6 by law.

7 THE CHAIRMAN: -- except to the extent pro-
8 hibited by law, 1, as typed, with the "s" off of govern-
9 ments; 2, as typed, with the deletion of the phrase, with
10 the approval of the General Assembly by law.

11 DR. BURDETTE: Why do you want to take the "s"
12 off governments?

13 THE CHAIRMAN: That was done quite some time
14 ago.

15 MR. CLAGETT: The Style Committee can put it
16 back.

17 THE CHAIRMAN: Yes. Are you ready for the
18 question? All those in favor, signify by saying Aye. Con-
19 trary, No. The Ayes have it.

20 That concludes your presentation of Article
21 XII, Mr. Clagett?

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1 MR. CLAGETT: Yes, sir.

2 THE CHAIRMAN: Let me say that I am bold enough
3 at this hour to prognosticate that we will not have an
4 evening session, and I would be bold enough to say that
5 unless I am sadly mistaken, we should be able to finish
6 within the next 30 to 40 minutes.

7 MR. CLAGETT: We will stick with you.

8 THE CHAIRMAN: Mr. Martineau?

9 MR. MARTINEAU: Mr. Chairman, do you want me
10 to first take up the matter of the term of judges, or do
11 you wish to approve the changes in the Report and then go
12 to the question of term?

13 THE CHAIRMAN: Let's take up the changes,
14 because I think you can move through those very quickly,
15 and then we can consider the term.

16 MR. MARTINEAU: I hope so.

17 I would run through this to indicate the changes
18 to you from the Sixth Report. The first one is in Sec-
19 tion 3 on Page 2, which is merely a correction I mentioned
20 to you at the last meeting, deletion of the word, associate,
21 in the second line of Section 3B.

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1 THE CHAIRMAN: These changes are indicated
2 in that instance by strike out?

3 MR. MARTINEAU: That is right. The next
4 change is on Page 3, in Section 5C. This was an effort
5 to meet objections of both the State Bar Association
6 and of the Judicial Conference Committee and of the
7 Supreme Bench of Baltimore City with respect to the powers
8 of Commissioners. There was an effort both to make cer-
9 tain that the judges could exercise powers with respect
10 to arrest, bail, collateral and incarceration as well as
11 Commissioners and also to make sure that the Commissioners
12 would not be overly restricted by the language in the
13 Constitution as to the powers that they could exercise
14 in this field.

15 The language now is intended to read, Com-
16 missioners may exercise only such powers with respect to
17 arrest, bail, collateral and incarceration pending hearing
18 as may be prescribed exclusively by rule.

19 I might ask as a matter of the English question
20 or a question of style whether, only, should be before
21 the word, exercise, so as to indicate clearly that the

1 Commissioners may have powers only in this field. I
2 don't know whether this is so.

3 THE CHAIRMAN: May I make a suggestion here?
4 I am troubled by this language on the matter of arrange-
5 ment and yet I think it is really a question for the
6 Committee on Style, as is also your question. The fear
7 I have, reading this now, is that, and I think this is
8 my own --

9 MR. MARTINEAU: If you weren't going to say it,
10 I was going to say it.

11 THE CHAIRMAN: -- but the fear I have is that
12 this could be read to mean that the Commissioners may
13 ⁱⁿ exercise/these particular fields only powers prescribed
14 by rule, but in other fields they could have other powers.
15 That is not intended, as I understand.

16 MR. MARTINEAU: That is why I mentioned chang-
17 ing the word, only.

18 THE CHAIRMAN: Can we say that the sense of the
19 Section is that the Commissioners shall exercise powers
20 only in these fields and that the extent to which they
21 exercise the powers shall be prescribed by rule.

11)

1 MR. MARTINEAU: The, only, applies both to
2 the field of powers and to the method of exercise of
3 powers.

4 DR. BURDETTE: If you want them to have other
5 powers --

6 THE CHAIRMAN: We do not. We want to make it
7 clear that they have powers only with respect to arrest,
8 bail, collateral and incarceration pending hearing
9 and that they have only powers in those areas to the
10 extent permitted by rule, so we would take it that the
11 language is intended to convey that meaning and the Com-
12 mittee on Style can rearrange it.

13 MR. MARTINEAU: Yes.

14 MR. BOND: Mr. Chairman, with a great deal of
15 trepidation, I ask this question: It is true, is it not,
16 that as far as the type of offenses and punishment, that
17 will still be in the Legislature's hands, is that correct?

18 MR. MARTINEAU: Yes.

19 MR. BOND: Am I also correct that the Committee
20 definitely doesn't want to do anything as to allocation
21 of powers of Commissioners? You don't want to have the

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1 Legislature have anything to do with that. You want the
2 government exclusively by rule, is that correct?

3 THE CHAIRMAN: That is correct.

4 MR. BOND: I disagree, but I am not going to
5 fight that battle.

6 MRS. BOTHE: This is perhaps a stylistic
7 caveat, too, but the change in language, where specifical-
8 ly before we enumerated the actual powers, and are
9 now speaking in generalities with respect to certain
10 areas, on reading it again, I have a certain fear that the
11 words are a little bit vague, with respect to arrest
12 might include more than arrest warrants, and with respect
13 to bail more than setting bail.

14 THE CHAIRMAN: I think the intent of the
15 Committee, as I understood it the other evening was to
16 let that vagueness be set at rest by rule, and I think
17 you could, perhaps, rephrase the clause to do that by
18 saying, for instance, that the Commissioners may exercise
19 powers only with respect to arrest, bail, collateral,
20 incarceration pending hearing and to the extent as may be
21 prescribed exclusively by rule.

1 MRS. BOTHE: I would like to find some other
2 words than, with respect to, that would still give some
3 latitude to the rule. I know, I am on the Committee, and
4 I didn't come up with anything better than the other
5 night.

6 THE CHAIRMAN: Let me suggest, if you dream up
7 another one, you tell the Committee on Style, and I think
8 they could help you.

9 MR. MARTINEAU: There is an intentional vague-
10 ness here, because one of the criticisms of our previous
11 language was that this was so restrictive that it might
12 be interpreted to mean the Commissioners could not exer-
13 cise some powers that they might be intended to exercise.
14 That is, could they, in lieu of, or where bail was for-
15 feited for some reason, and then commit a person to jail --
16 the way our language previously read, there was some
17 question raised by a number of lawyers as to whether they
18 could do this. We want to leave this intentionally
19 vague, so that the Supreme Court may by rule define their
20 powers with precision and with some freedom of changing
21 it as circumstances may arise.

1 THE CHAIRMAN: Next?

2 Mr. Sayre?

3 MR. SAYRE: If I were to read this as follows:
4 Commissioners may, as prescribed -- I didn't say, as may,
5 as prescribed exclusively by rule, exercise powers only
6 with respect, et cetera, that is what you mean?

7 THE CHAIRMAN: That is essentially what is
8 meant. Next, Page 5?

9 MR. MARTINEAU: The next change is on Page 5,
10 at the suggestion made, or as a result of a suggestion
11 made at the last meeting: We are changing the phrase,
12 judicial office, to the, office of judge, so that there
13 is no question but that the phrase does not apply to some-
14 thing such as Commissioner or something else, which may
15 be construed to be a judicial office but isn't actually the
16 type office we are talking about.

17 DR. BURDETTE: Do you have to say, justice or
18 judge?

19 MR. MARTINEAU: We went through this before, and
20 it is the Committee's view that the office of judge applies
21 to both justices and judges.

1 DR. BURDETTE: If I were on a court, I would
2 hold that the Constitution made no such provision, no
3 provision of any kind with respect to a justice.

4 THE CHAIRMAN: Next?

5 MR. MARTINEAU: That same change went through
6 all of Section A and also in Section B of Section 9.

7 The next change is on Page 9, in Section 10,
8 with reference to the provision for taking of poll of
9 lawyers when a judge is running in a noncompetitive elec-
10 tion. The word, shall, was changed to, may, upon the
11 suggestion of the State Bar Association Committee, that
12 it may arise in the future that such a poll may not be a
13 desirable arrangement, and that it should not be made
14 an inflexible part of the Constitution.

15 We want to have it in here to insure that the
16 Supreme Court has the power to conduct such a poll, but
17 not make it mandatory if under circumstances that we can-
18 not predict now, such a poll should not be held, whether
19 it is because of one reason or another, it does more harm
20 than good.

21 MR. BOND: Mr. Chairman, I know that some of

1 the judges are upset about that because they have told
2 me so. I think this is begging the issue, whether we
3 leave it in or take it out, so you may do it for Judge A,
4 and maybe not for Judge B.

5 THE CHAIRMAN: That is not what is intended,
6 that you may do it for all judges or not do it at all.

7 MR. MARTINEAU: This is done by rule, so it
8 is not a question of an ad hoc termination.

9 MRS. BOTHE: Mr. Chairman?

10 THE CHAIRMAN: Mrs. Bothe.

11 MRS. BOTHE: Mr. Chairman, I, myself, won't
12 make any motion to reconsider. I am on the Committee, and
13 the Committee, after reconsidering, determined only to
14 make the one word change, but upon looking over this pro-
15 vision, particularly in the light of the objections the
16 judges are making to it, it suddenly impressed me as being a
17 rather silly and unnecessary kind of a detail to stick
18 in the Constitution. We have had to make a very long
19 Judiciary Article, partly because of the changes in the
20 selection of judges. It is much longer than I would like
21 to see it, though I don't see too many ways of cutting it.

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1 This is one where I think we could cut out half of a
2 Section and put the whole thing in a much more proper
3 perspective. I don't think this business of holding
4 polls among the lawyers is of constitutional significance.
5 I just want to express my change of heart on the subject
6 as a Member of the Committee.

7 THE CHAIRMAN: You said you do not want to
8 make a motion?

9 MRS. BOTHE: Not unless somebody else feels
10 fit, I don't feel it is appropriate for me.

11 THE CHAIRMAN: Mr. Clagett?

12 MR. CLAGETT: I want to understand clearly,
13 Mr. Chairman, this change is one that was made by the
14 Committee and not acted on by the Commission?

15 MR. MARTINEAU: That is right.

16 MR. CLAGETT: I would move the word, may, be
17 stricken, and the word, shall, be included in the consti-
18 tutional provision.

19 THE CHAIRMAN: Is there a second?

20 MR. BOND: I will second it.

21 THE CHAIRMAN: Any discussion? Do you want to

1 say anything, Mr. Clagett?

2 MR. CLAGETT: As one who has had the experience
3 of the necessity of such a provision, all that really is
4 being called for here is that a judge conduct himself
5 with a degree of judicial demeanor consistent with
6 the office, and that he be required to extend to attorneys
7 practicing before him the same degree of courtesy which
8 he has authority to require them to extend toward him.
9 If you don't have some such provision as this, I think
10 you are going to find that unfortunately, human nature
11 being what it is, without deterrent, that it will serious-
12 ly reflect upon the relationship between the Bench and the
13 Bar.

14 THE CHAIRMAN: Any further discussion?

15 MR. CLAGETT: I think that states the position.

16 THE CHAIRMAN: Further discussion?

17 MR. HARGROVE: I think it should be pointed
18 out that in the discussion the other evening there was
19 some distinction made between perhaps the larger metropoli-
20 tan areas and the Counties, where you are dealing with
21 some 3000 lawyers in Baltimore City, most of whom do not

1 appear before the court at all, and when you get to cer-
2 tain courts, such as the District Court, which I would
3 say about 90 per cent of them do not appear, and then
4 you call upon them to decide whether they do or do not
5 want to continue this judge in office. This is where the
6 problem begins. It does not appear in many Counties,
7 where the association of lawyers is very small. You have
8 some as small as ten in number and perhaps it goes up
9 from there. This is where the problem is, I believe,
10 and that is one of the reasons why we went to, may,
11 instead of, shall, because it might appear later that with
12 such an unwieldy number, this might not be proper, at
13 least in order.

14 THE CHAIRMAN: Mr. Bond?

15 MR. BOND: I would like to say a few judges
16 expressed to me they don't want to be sitting on the
17 Bench and running a popularity contest. I think there is
18 a lot to be said for the statement Mr. Claggett made.
19 I would also state, that our State does nothing. I cannot
20 see the Supreme Court putting it in for Charles County
21 and leaving it out for Caroline County. I don't think it

1 will ever go through if you leave the word, may, in.

2 MR. CLAGETT: The other very strong reason
3 in back of this, Mr. Chairman, is, I do feel it is the
4 responsibility of the lawyers to make known to the public
5 at large the status of a judge's position so far as doing
6 the job of the judge is concerned.

7 THE CHAIRMAN: Any further discussion?

8 DR. BARD: I would like to ask a question.

9 THE CHAIRMAN: Dr. Bard?

10 DR. BARD: Mr. Chairman, I opposed this orig-
11 inally, and now I find that the very group upon whom I
12 really depended for an answer is divided.

13 MR. MARTINEAU: I think you will find that
14 always true.

15 DR. BARD: I know. On this question, the point
16 I am raising is, can I ask Mr. Clagett whether he would
17 favor taking the entire sentence out?

18 MR. CLAGETT: If it is going to be may, instead
19 of shall, I would answer that in the affirmative. I don't
20 think it would ever do any good. I don't think they
21 would ever pass any such rule. I think it has either

1 got to be mandatory or you might as well leave it out.

2 DR. BARD: Would it still be possible for
3 lawyers to have this kind of a poll informally, as they
4 often do?

5 THE CHAIRMAN: Bar Associations could act, yes.

6 DR. BARD: Then I would like to make a sub-
7 stitute motion, that we take the entire sentence out.

8 THE CHAIRMAN: If you don't mind me saying so,
9 I think we will make better progress to move on the
10 substitute first. Then you can make your other motion if
11 you want to. Any further discussion? I would like to
12 make one very, very brief comment. Mr. Martineau didn't
13 mention what I think was said, and he can correct me
14 if I am wrong, that the Bar Association Committee was
15 unanimous in expressing opposition to this as a mandatory
16 provision and pointed out what, to me, is the one com-
17 pelling reason for the change, if there is any compelling
18 reason, and that is that although I think most lawyers,
19 and maybe the very great preponderance of lawyers, maybe
20 after all of them, favor this kind of provision at the
21 present time. We recognize that it is an innovation.

1 It is something new, and it may be that the Supreme
2 Court will adopt a rule and provide for it, and then we
3 find, for some reason, that we don't foresee now, that it
4 just simply backfires or doesn't serve its purpose. The
5 thought was that in that situation, the Supreme Court
6 could say, All right, we won't do it.

7 I, personally, would be perfectly content to
8 leave it to the Supreme Court to decide whether, by
9 general rule, not by election, a particular election, but
10 by general rule that there will or will not be a poll
11 because I think, except that difficulties develop that
12 the Supreme Court would make this provision. Any further
13 discussion?

14 MR. MARTINEAU: Mr. Chairman, I might make the
15 comment that this has been done in other States without
16 any specific authority by the highest court of the State.
17 For that reason, I don't feel that merely if we make it
18 may, rather than shall, that it won't be done. I frankly
19 think it will be done.

20 MRS. BOTHE: Could I ask a question?

21 THE CHAIRMAN: Yes.

1 MRS. BOTHE: In these States that do have
2 lawyer polls, is it in the Constitution?

3 MR. MARTINEAU: No. It is not.

4 THE CHAIRMAN: All right. Now the question
5 arises on the motion to substitute the word shall, for
6 the word may, the second word in the next to last sentence
7 of Section 10. If the motion carries, or if it does not
8 carry, I will recognize anybody to make a further motion
9 with respect to the sentence. A vote Aye is a vote in
10 favor of substituting the word shall. A vote Nay, is a
11 vote in favor of retaining the word, may. All those in
12 favor, please signify by a show of hands.

13 DR. BURDETTE: This is a vote --

14 THE CHAIRMAN: A vote for, shall. Contrary.

15 MR. BROOKS: Three.

16 THE CHAIRMAN: Contrary?

17 MR. BROOKS: Twelve.

18 THE CHAIRMAN: The motion fails, 3 to 12.

19 Dr. Bard?

20 DR. BARD: Mr. Chairman, I would like to move
21 that we delete the entire sentence.

1 THE CHAIRMAN: Is there a second?

2 MRS. BOTHE: Second.

3 MR. BOND: Second.

4 THE CHAIRMAN: Is there any discussion?

5 MR. MARTINEAU: I would like to comment on
6 that.

7 THE CHAIRMAN: Mr. Martineau?

8 MR. MARTINEAU: I certainly think that this
9 should be included. It has been included in any draft
10 of the Niles Plan that has been submitted so far. It has
11 been one so far as I know that has always been one of the
12 saving features of the noncompetitive election, that the
13 electorate has to have some guide in voting for or
14 against a judge who is running in a noncompetitive elec-
15 tion. The only reasonable guide that has been developed
16 up until now has been a poll of the lawyers, along with
17 what other judicial, or any other newspaper or other pub-
18 lic groups might come out for or against a particular
19 judge. I think this is most important. I think it would
20 seriously hurt the chances of having the noncompetitive
21 election procedure adopted if no provision is made for

1 this type of procedure, and specifically mentioned in the
2 Constitution. For that reason, I would hope that the
3 motion would fail.

4 THE CHAIRMAN: Anything further?

5 Mr. Clagett?

6 MR. CLAGETT: I would endorse that and take
7 back the statement that I made to Dr. Bard a little
8 while ago, because I do believe that this is necessary to
9 persuade lawyers to go along with this judiciary written
10 Article.

11 THE CHAIRMAN: Any further discussion?

12 Mr. Sayre?

13 MR. SAYRE: I have a question here. This poll
14 is to help guide the public in voting, is that right?

15 THE CHAIRMAN: That is right.

16 MR. SAYRE: I appreciate the proper role of
17 polling the attorneys. I am just wondering whether it
18 should be, whether the pole should be restricted to
19 attorneys?

20 THE CHAIRMAN: You have a general election, so
21 everybody votes. This is merely the views of what

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1 supposedly is informed group.

2 MR. MARTINEAU: That is the group poll.

3 MR. SAYRE: I don't know where else you draw
4 the line.

5 THE CHAIRMAN: Mrs. Bothe?

6 MRS. BOTHE: I would like to comment a little
7 further on my view that we should knock this out of
8 the Constitution. I understood it was put in there in
9 the first place because there was some question that the
10 Court of Appeals, by rule, could impose these elections.
11 Apparently, they are in other States without constitution-
12 al sanction. I don't know why, under our Maryland Con-
13 stitution, the Court of Appeals couldn't conduct these
14 polls if it saw fit.

15 I don't think that the acceptability of the
16 noncompetitive election is going to turn on this; just
17 because a bunch of lawyers can advise the politicians, I
18 don't believe is going to make the politicians any happier
19 with the inability to choose the judges.

20 The Bar Associations and the Court of Appeals
21 could both perform this function. I have no doubt that

1 the lawyers are going to do everything they can to per-
2 suade the electorate of the people who are qualified or
3 disqualified to continue in office under the system. I
4 can't picture the Bar Associations and the organized Bar
5 or even the Court of Appeals sitting by particularly if
6 a judge that should be deposed is involved.

7 The provision is really aimed, I think, more
8 against the judge than for the judge. People tend to
9 be negative. The choice is only whether he should continue
10 or not continue, and I am afraid it might very well back-
11 fire because of the indifference that usually attends the
12 selection of someone who is noncontroversial and reason-
13 ably competent. For instance, if lawyers refrain from
14 voting, certainly the Constitution can't require them to
15 vote or the Court of Appeals. Suppose a judge received
16 only a handful, 20, 30 votes in Baltimore City out of
17 3000 lawyers eligible to vote for him. Mightn't his
18 opponents say, Only 20 or 30 lawyers thought he was fit
19 to be retained in office.

20 THE CHAIRMAN: There would be some cause to
21 say that, I would think, in that situation.

1 MRS. BOTHE: I don't know. I really feel that
2 this kind of a provision in the Constitution, it is ad-
3 visory only; it doesn't have any necessary effect one
4 way or the other. It is just not the kind of thing that
5 we ought to implant in the middle of an otherwise very
6 explicit and meaningful Judiciary Article.

7 THE CHAIRMAN: Any further discussion?

8 Dr. Bard?

9 DR. BARD: I would like to close it, if I may.

10 THE CHAIRMAN: Before you close, I would like
11 to make this comment: I think this is a salutary pro-
12 vision. I think it is vital, and I say that notwithstand-
13 ing the question that exists, that as something new, it
14 may be proved later to be not feasible for some reason or
15 other, but I think the thing you must keep in mind is this:
16 This is purely advisory. It is an opinion expressed to the
17 electorate by a group which should be informed, and a
18 group which I think will take the obligation seriously, and
19 you will not have abstention. I think you will have almost
20 every Member of the Bar participating in the poll. What
21 you have as the alternate is what you have now, namely,

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1 endorsement, or lack of endorsement by lawyers' associa-
2 tions and in metropolitan areas such as Baltimore, this
3 means endorsement or lack of it by the Baltimore City Bar
4 Association, the Monumental Bar Association, the Women's
5 Bar Association, Plaintiffs Bar Association, Federal Bar
6 Association, and numerous others, with the result that
7 the electorate is completely confused. They cannot dis-
8 tinguish and rightfully cannot distinguish between the
9 Baltimore City Bar Association and the Federal Bar Associa-
10 tion, or the Plaintiffs Bar Association.

11 MR. DELLA: I just wanted to ask a question,
12 in view of my questions in the last discussion. Do you
13 really believe the lawyers in the State or in Baltimore
14 or anywhere really have the nerve to vote against a judge
15 and then go before him again with another case?

16 THE CHAIRMAN: This would be a secret ballot.
17 I haven't the slightest doubt that they would express
18 their opinion.

19 Mr. Sayre?

20 MR. SAYRE: This is an exploratory question
21 like the other. In taking a poll of lawyers, and this

1 means every bona fide lawyer in the area affected,
2 right --

3 THE CHAIRMAN: As determined by the Supreme
4 Court, yes.

5 MR. SAYRE: -- and yet only maybe 10 per cent
6 or 20 per cent of those attorneys appear in court, in
7 certain of these areas, how can you have a valid poll
8 as to rendering judgment?

9 THE CHAIRMAN: Mr. Sayre, I would think it is
10 a complete misapprehension to suppose that a lawyer in
11 active practice in the metropolitan area who never goes
12 into court, thereby has no views or opinion, and proper
13 opinions as to the capabilities of/judge^a, in any large
14 office, for instance, you will have a very substantial
15 number, perhaps most of the lawyers never go near a
16 courtroom, but I assure you that they have decided views
17 and they probably are very well informed as to the capa-
18 bilities of judges.

19 MR. SAYRE: That isn't necessarily confined
20 to judges, in other areas where they are close to court
21 actions.

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1 THE CHAIRMAN: I didn't follow you.

2 MR. SAYRE: Any firm that is following a court
3 because of its particular activity, receiving reports,
4 you could be an accountant, you could be a lobbyist, you
5 could be in a number of fields where you follow what a
6 judge does.

7 THE CHAIRMAN: This is true. All you are say-
8 ing is, there are probably other people who are as in-
9 formed as many lawyers. This is true, but by and large,
10 the lawyers as a group should be and probably are better
11 informed. We are not precluding the chance of any other
12 group expressing an opinion.

13 Dr. Templeton?

14 DR. TEMPLETON: Based upon this same question,
15 a small percentage of lawyers, according to Mr. Hargrove,
16 actually practice in court. I won't make a further com-
17 ment.

18 THE CHAIRMAN: This is true. The number in the
19 active Bar who actually engage in court by going over and
20 trying cases is relatively small. Dick, do you have any
21 idea what it would be in Baltimore City?

MR. CASE: I wouldn't know, Vernon. It is very

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1 small.

2 THE CHAIRMAN: My guess it is not only 15
3 per cent of the Bar.

4 MRS. BOTHE: You have another problem. I
5 practice quite a bit in the Court House, and yet with the
6 number of judges we have, I can't really say I know them
7 all. Judge Moylan, for instance, in the Juvenile Court,
8 I wouldn't be able to pass on him.

9 THE CHAIRMAN: I daresay as a result of your con-
10 versations with other lawyers, you have probably decided
11 opinions as to every judge in the Court House.

12 MR. CLAGETT: I think that is exactly what
13 has been said here, points up that this is really not
14 a popularity contest at all. What it really is, is the
15 general stature and reputation of the judge insofar as
16 competence to perform his judicial duties. That is really
17 the gist of what this whole conversation is indicating.

18 THE CHAIRMAN: Dr. Bard?

19 DR. BARD: I would just like to close with
20 four points that I have: One, it seems to me to be a
21 procedural matter rather than a substantive one, and in

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1 general, we have not included procedural matters within
2 the Constitution; two, there seems to be a good deal of
3 doubt among lawyers and judges about its value. Within
4 15 minutes one lawyer, a Member of this Commission, has
5 changed his mind from a strong position on one side to
6 the opposite. If we put it in, there is a mandate to use
7 this procedure, and it seems to me to be clearly wrong
8 where there is so much division.

9 Third, this action, it seems to me, would not
10 be in accordance with our general practice, in that it
11 would give special attention to an advisory group, with
12 a particular interest or skill, and finally, as I see it,
13 it would set forth the concept of a preliminary vote,
14 influencing a general vote, and that this preliminary
15 vote might be interpreted as a sort of a primary vote.

16 MR. DELLA: Would this provision mean the
17 Bar Association would approve the closed shop provision?

18 THE CHAIRMAN: This has nothing to do with the
19 closed shop. Are you ready for the question? The question
20 arises on the motion to delete the next to last sentence
21 from Section 10. A vote Aye is a vote to delete. A vote

1 Nay leaves the sentence as recommended by the Committee.

2 MR. SAYRE: One more question, if I may.

3 THE CHAIRMAN: Go ahead, please.

4 MR. SAYRE: If this were not in, could the
5 court still do this by rule?

6 THE CHAIRMAN: That has been answered. Some
7 States do. Doubt has been expressed as to whether the
8 court in Maryland could or would do so. Any further
9 discussion? A vote Aye is a vote to delete. A vote Nay
10 supports the Committee. All those in favor, that is,
11 in favor of deleting the sentence, signify by a show
12 of hands.

13 MR. BROOKS: Five. Six.

14 THE CHAIRMAN: Contrary?

15 MR. BROOKS: Nine.

16 THE CHAIRMAN: The motion is lost, 6 to 9.

17 The next one is Page 10.

18 MR. MARTINEAU: The next one is Page 9. It
19 just, in Section 11, changes the word, temporary, to
20 temporarily, in moving it. This was done at the last
21 meeting, and this merely reflects that.

1 THE CHAIRMAN: Page 10.

2 MR. MARTINEAU: The next one is Page 10. You
3 can see by the previous Section printed above there that
4 is now crossed out, the sentence used to read, No judge,
5 during his continuance in office and no retired judge
6 while receiving any --

7 THE CHAIRMAN: Let me shorten. Is this not
8 the change that was approved?

9 MR. MARTINEAU: This was ordered at the last
10 meeting.

11 THE CHAIRMAN: There is nothing new in this?

12 MR. MARTINEAU: No. It is merely putting the
13 last sentence, the last sentence is really the new
14 material, No retired judge while engaging in such activities,
15 shall be paid any pension for his judicial service.

16 This is to make sure that if he does any of
17 these things, he isn't forever --

18 THE CHAIRMAN: The concept isn't new?

19 MR. MARTINEAU: No. This was approved at
20 the last meeting.

21 THE CHAIRMAN: Page 11.

1 MR. MARTINEAU: Page 11 merely changes the
2 phrase, taking out, for each division of the District
3 Court, and saying, There shall be a Chief Deputy Clerk
4 of the District Court in each district.

5 THE CHAIRMAN: As indicated on Page 11?

6 MR. MARTINEAU: That is correct. That was
7 also approved at the last meeting.

8 THE CHAIRMAN: I think the last piece of busi-
9 ness is, I understand, a motion of the Committee for
10 reconsideration of one question involved in this Section.

11 MR. MARTINEAU: That is correct. I might say,
12 what we are talking about here is in Section 10, on
13 Page 8, and in Line 3, it provides that every ten years
14 after his original standing for office, the judge must
15 stand again in a noncompetitive election. Our original
16 Committee proposal, as you will recall, was 14. This Com-
17 mission voted in August or September, I don't remember
18 which, by a vote of 15 to 8, to reduce the term from 14
19 years to ten years. We have been requested by the State
20 Bar Association Committee and by the Committee on the
21 Judicial Conference, of the Judicial Conference unanimously

1 to bring this matter back to the Commission, ask for its
2 reconsideration, to change back to the Committee's
3 original proposal and have ten years read 14 years.

4 The Committee in deciding to raise this matter
5 for reconsideration first voted 2 to 2 as to whether to
6 bring it back.

7 THE CHAIRMAN: Wait just a moment. The first
8 matter is the motion to reconsider. You are making such
9 a motion to the Committee?

10 MR. MARTINEAU: I want to explain why.

11 THE CHAIRMAN: All right.

12 MR. MARTINEAU: The Committee voted 2 to 2 on
13 the question of whether to have this reconsidered. I
14 changed my vote to have it 3 to 1, so that the Committee
15 would request it, not because I believe that this Com-
16 mittee, or that this Commission should change its mind,
17 but that I believed that in view of the request made to
18 us by the State Bar Association, and the Judicial Con-
19 ference that we owed it to them to reconsider this, in
20 view of their comments, and therefore, the Committee re-
21 quests that this matter be reconsidered.

1 THE CHAIRMAN: Under our rule that is sub-
2 mitted to you without a second because it is made by the
3 Committee and without debate.

4 I want to make this explanatory statement,
5 not explanatory, a comment: This provision was approved
6 by the Committee, by the Commission, after very full dis-
7 cussion, I think for several hours, on September 20, the
8 present approval, that is, to reduce the number from 14
9 years to ten years, being carried by a vote of 15 to 8.
10 There are now 16 Members of the Commission present. The
11 question arises on the motion to reconsider. A vote Aye
12 is an approval reconsideration. It is not necessarily
13 an approval of the change.

14 MR. BOND: A point of information, sir. Do
15 you think we are ready to vote on this point for re-
16 consideration? We haven't had asserted to us in any way
17 what the reasons of the Judicial Conference or the
18 Maryland Bar were, so I have nothing more than to reaffirm
19 the Committee if I have to vote because I have no idea
20 of the reason brought before the Committee.

21 MR. MARTINEAU: They are not new ones.

1 THE CHAIRMAN: If the Commission decides to
2 reconsider, you can have full information on it.

3 DR. BARD: A point of information. Would
4 passage of the motion to reconsider necessarily mean re-
5 considering today?

6 THE CHAIRMAN: No, sir. I don't see how we
7 could possible put something -- I won't say we can't.

8 DR. BARD: The reason why I say that is
9 because from the data which you just quoted, Mr. Chair-
10 man, it doesn't seem right to reconsider with such a
11 small group.

12 THE CHAIRMAN: That is why I mentioned the
13 fact, but the difficulty I have is that we could put
14 this off, and you decide it on the next meeting. Without
15 a lot of debate, there would be no difficulty. We
16 discussed it for several hours before. If you reconsider
17 it at another meeting, you may have the same length of
18 discussion. We have got other questions to come up and
19 at some point, we have to stop considering.

20 DR. BARD: You have answered it.

21 THE CHAIRMAN: Any further discussion? I don't

1 mean discussion; I mean any further question? The
2 question arises on the motion to reconsider the action
3 of the Commission in providing in Section 10 that the
4 noncompetitive election should be every ten years. A
5 vote Aye is a vote in favor of reconsideration. Those
6 in favor of reconsideration, signify by a show of hands.

7 MR. BROOKS: Four.

8 THE CHAIRMAN: Contrary?

9 MR. BROOKS: Eleven.

10 THE CHAIRMAN: The motion loses, 4 to 11.

11 Do you have anything further, Mr. Martineau,
12 on the Judiciary Article?

13 MR. MARTINEAU: Just to say Amen.

14 (Whereupon the meeting concluded at 5:40 p.m.)
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CONSTITUTIONAL CONVENTION COMMISSION

Meeting held of the Constitutional Convention Commission on Monday, December 19, 1966, at 2 o'clock p.m., at Room C-211, University of Maryland, School of Law, Baltimore, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Richard W. Case, Esquire, Member
Hal C. B. Clagett, Esquire, Member
Mr. Charles Della, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
James O'Connor Gentry, Esquire, Member
Honorable Walter R. Haile, Member
John R. Hargrove, Esquire, Member
Stanford Hoff, Esquire, Member
Dr. Martin D. Jenkins, Member
Robert J. Martineau, Esquire, Member
Clarence W. Miles, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
Mr. L. Mercer Smith, Member
Dr. Furman L. Templeton, Member

Reported by:
M. Wasserman

1 ALSO PRESENT:

2 John C. Brooks, Esquire, Executive Director
3 Dr. John H. Michener, Reporter for Committee
4 on the Legislative Department
5 Mr. Lewis A. Noonberg, Reporter for Committee
6 on Miscellaneous Provisions
7 Dr. Clinton Ivan Winslow, Consultant

8 -----

9 THE CHAIRMAN: Come to order, please.

10 As all of you know, we still have not circulated
11 for approval the Minutes of the last few meetings. This
12 has been due to the difficulty in having the transcripts
13 gone over and checked, in order to prepare the Minutes.
14 This work on the transcripts has now been completed and
15 we will send you the Minutes. However, this is not being
16 given quite the same priority as work on the draft and,
17 therefore, you may not receive them until after the next
18 two weeks. At that time, we will ask you to review them
19 promptly and write any comments, corrections or additions
20 that you may have, because we will not take them up at
21 another meeting of the Commission.

The report of the Secretary, do you have anything
to report, Bob?

1 MR. MARTINEAU: I just will affirm that they
2 won't be gotten to you within the next two weeks.

3 I think we should, now that Judge Adkins is
4 here at the beginning of the meeting for the first time,
5 the one question that he had --

6 JUDGE ADKINS: I was here at 10 o'clock this
7 morning, Bob.

8 MR. MARTINEAU: The one question/^{why}we have not
9 approved the August Minutes was because Judge Adkins
10 raised a question as to whether he made a motion.

11 Judge, do you recall which that was?

12 JUDGE ADKINS: No, I will have to look at it
13 which I will do before I leave today.

14 MR. MARTINEAU: I have a copy of it, if you
15 will tell me which one it is, I will check on the trans-
16 cript.

17 JUDGE ADKINS: Let me look this over.

18 MR. MARTINEAU: I wonder if we couldn't just
19 approve the August Minutes subject to deleting Judge Ad-
20 kins if it is found to be incorrect.

21 THE CHAIRMAN: Any objection to that procedure?

1 if not, that is what we will do.

2 Judge Adkins, you can do that later, if you
3 like, and not pause at the moment.

4 Next is the report of the Executive Director.

5 MR. BROOKS: I am not sure whether everyone
6 has had a chance to meet the staff members that are here.
7 Since we have some Commission members back with us after
8 an absence, a number of changes have occurred, so I
9 think I will reintroduce the staff members with us today.

10 Mrs. Wiegand, our head office secretary who is
11 with us on my right today, who will be taking some notes
12 for us, so we will have some notes prior to receiving the
13 transcript back. Mrs. Estelle Fishbein, who is helping
14 us with some of the editing, who was at one other meeting
15 recently. Buzzy Hettleman, who is sitting down here on
16 the far end of the table, who is helping us with some
17 of the administrative matters. And two research assist-
18 ants, Frank Ralabate in the center on the side and Ken
19 Lasso by the door.

20 We redistributed a current list of office and
21 home addresses and phone numbers because we thought many

1 of you -- we had some requests for some up-dated ones
2 and thought you would like to have a current list with
3 corrections. This is the latest information available
4 to us.

5 This afternoon, we will have made at 4 o'clock
6 a Commission photograph for, hopefully, inclusion in the
7 Commission's report.

8 If, for any reason, there is any problem with
9 the photograph that is made, as an alternative, we are
10 contemplating using the individual photographs that you
11 sent us earlier in the year.

12 Most of you know, probably, whether or not you
13 did send such a photograph. I do not have such a list
14 with me today. If you haven't, we hope you will, other-
15 wise we will be sending you a reminder because we will
16 go ahead and get those in hand before making a determina-
17 tion as to which photographs we will use.

18 Mr. Eney has mentioned that we are in the pro-
19 cess still of combining all of the Committee reports.

20 We have a draft now on tape on a new Mock 10
21 machine that we have from which we will type stencils and

1 do the rest of the editing. This will be in your hands
2 sometime before the week's end. We will probably have the
3 stencils finished this afternoon, so you will get those
4 Wednesday or Thursday, mail permitting. Mr. Eney.

5 THE CHAIRMAN: I have several matters on which
6 I would like to report to you.

7 Now, first I present apologies from Governor
8 Lane who found it impossible to be here this afternoon
9 for a number of reasons, one of which is the unfortunate
10 illness of Mrs. Lane. He regrets his inability to be pre-
11 sent and asked me to extend to each and every member of
12 the Commission and the staff his very heartiest wishes
13 for a very merry Christmas.

14 Next, I would like to report, for the benefit
15 of those who, for one reason or another, were unable to
16 attend the dinner given to the Commission by Governor
17 Tawes, that they missed a very very nice, very pleasant
18 and delightful occasion.

19 It was very unfortunate that the heavy wet snow
20 started in the north-central part of the State because
21 that made it really impossible for those members of the

1 Commission living in that end of the State to get down
2 to the meeting.

3 The rest of us who were there thoroughly enjoyed
4 ourselves and enjoyed the time spent with the Governor.

5 I also want to report to you that, in my
6 opinion at least, and I think this is the opinion of
7 practically everyone who was present, the Goucher confer-
8 ence on problems of metropolitan areas was a huge success.

9 I might add that John and I, and the other mem-
10 bers of the staff, and the people at Goucher who planned
11 this meeting, had many attacks of butterflies in the week
12 before because we had no precedents to guide us. We
13 didn't know whether the conference would be a complete
14 flop or highly successful.

15 We had some very eminent out-of-State people,
16 experts if you want to use that term in the field, and
17 at the conclusion of their rather brief remarks at the
18 introductory part of the program, when we threw the meeting
19 open, we didn't know whether we would be met with simply
20 dead silence or a real dialogue.

21 I am happy to report to you that the converse

1 was true, we met with a real dialogue, and notwithstand-
2 ing the rather important football game on Saturday after-
3 noon, continued until 3:45 Saturday afternoon and adjourn-
4 ed then only because some of the out-of-town members had
5 plane commitments.

6 I think the --

7 DR. JENKINS: To which game are you referring,
8 Morgan State or the Colts?

9 THE CHAIRMAN: Both. The results of this will
10 be published and is presently -- the transcripts are
11 being edited by Dr. Loevy.

12 As I think all of you recall, the cost of this
13 program, which is not great, was financed through Title 1
14 of the Education Act and we hope that the booklet, or
15 the bound volume of the transcript, and the additional
16 comments will be ready in the relative near future. We
17 will send it to every member of the Commission and, of
18 course, the primary purpose is to have sufficient copies
19 available for the entire membership of the Constitutional
20 Convention and its staff.

21 This nearly rounds out the program that we have

1 been trying to work out as to supplemental investigations
2 of various aspects of our endeavors, so that the Consti-
3 tutional Convention, in addition to having before it
4 our report, and workbook and the detailed results of our
5 studies, will have before them with respect to each of
6 the three major branches of Government, and also with
7 respect to political subdivisions, completely independent
8 and outside investigations.

9 As to the Executive Department, they will have,
10 of course, the report of the Curlett Commission. The
11 initial report will be available in the near future.
12 The final reports would, I hope, be available before the
13 Convention meets.

14 The work which started off as an investigation
15 of the General Assembly by the Young Democrats Club and
16 then was broadened to include the Young Republicans, and
17 then broadened still again by a group which is called
18 the Citizens Commission on the Legislature, will have a re-
19 port available within the next thirty days. This in no
20 sense is a discussion of the Constitutional provisions
21 with respect to the General Assembly, but will present

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1 the results of detailed testimony by Governors, and
2 former Governors, by present and former members of the
3 Legislature, and numerous other persons as to the actual
4 operations of the Legislature. This will, we think,
5 form a very valuable document for the Constitutional Con-
6 vention to consider, in connection with the recommenda-
7 tions of this Commission as to the Legislative Department.

8 The third area that we have hoped -- or the
9 fourth area that we have hoped to have an independent
10 study on is still in the offing but I hope will be con-
11 cluded, and that is the study of the judicial system of
12 Maryland by the Institute of Judicial Administration.
13 That is ready to go ahead, provided we can get a foundation
14 grant to pay the cost of it. I have had several con-
15 ferences recently with the foundation which is very much
16 interested in the project and I am hoping that they will
17 give us an affirmative answer within the next ten days.
18 If so, that project will move ahead. It will take six
19 months to complete and, therefore, if we can get clearance
20 by the first of the year, it should be available by next
21 summer, in time for consideration by members of the Consti-

tutional Convention.

Another matter on which I wish to report to the Commission has to do with the very important question of election of delegates. As all of you I am sure have heard from the comments from your friends, and others, and have read in the newspapers, there's an increasing awareness of the urgent necessity to work out some solution to the problem of a great number of delegates.

John Brooks and I have, following the suggestions made at the last meeting, been pursuing the plan of meeting with political leaders throughout the State on a sort of a two-by-two basis, and I must say that the initial response that we have had from these discussions has been very heartening.

I think one of the most interesting things that has come out of it is the unanimous feeling of all the persons to whom we have talked that the suggestion outlined at the Commission's meeting several months ago that we arrange for an advance meeting of the Convention early in July, to elect officers, and organize, and set up an organization that can appoint committees, and that then we

1 have an orientation session of several days to acquaint
2 the new delegates with some of the problems, as I say,
3 has met with a universal favorable response.

4 Statements have been made to us by everyone
5 to whom we have talked that we should anticipate no
6 difficulty whatsoever from the Legislature on this point.
7 That, of course, remains to be seen because none of us
8 know exactly what the reactions of the current Legisla-
9 ture will be.

10 Nevertheless, in preparation for that kind of
11 a session, we have begun to accumulate materials that
12 ought to be made available and ought to be explained.
13 I mention these at this time, so that any of you that
14 have suggestions as to additional things that we ought to
15 be assembling now for the benefit of the Convention, could
16 pass the suggestions along to us and we would be very
17 happy to have it.

18 Miss Bishop, I am sure there is a chair here,
19 if you will just come in and sit down.

20 MISS BISHOP: Thank you, Mr. Eney.

21 THE CHAIRMAN: Some of the things we have con-

1 sidered are these. We have asked the Comptroller to
2 print an additional number of copies of the Comptroller's
3 annual report. He is doing this, so that the current
4 annual report will be sufficient that we can have
5 for every member of the Convention and the staff.
6 In addition, he has gathered together for us as many
7 of reports in the past four or five years as are
8 available in his Department, so that they can form a
9 the library of the Convention.

10 We have made the same arrangements with respect
11 to the budget. The current budget will be printed in
12 an additional number of copies, so there will be a
13 sufficient number so that every delegate will have one.
14 Now, quite obviously, to hand the great big budget to
15 delegates to this Convention, without any explanation,
16 would be a completely futile thing to do. So this is
17 part of the planning for the orientation session. We
18 would hope that Mr. Sleicher, for instance, or somebody
19 from the Budget Department, Budget Bureau, would devote
20 some time at the orientation session to explain the nature
21 of the budget, so the delegates, when they consider the

1 report of this Commission as to budgetary provisions
2 would at least understand the difference between the pro-
3 gram budget and the line item budget and have other such
4 things in mind.

5 Dr. Everstine is trying to gather together for
6 us other reports of general departments, and the Budget
7 Bureau has agreed to check through every report, or check
8 through a list of reports of all departments that are
9 currently being printed, so that we can decide which of
10 these should be a part of the private library of each
11 delegate.

12 Now, I am quite sure that there are those of
13 you with experience in State Government who know of re-
14 ports or documents that it would be relatively easy to
15 obtain now in sufficient quantity, but would be very
16 difficult to obtain later. If there are any such, would
17 you please drop me a note, or John a note, so that we
18 can make the arrangements now?

19 What we are trying to do, of course, is not to
20 deliver a short course in government to the members of
21 the Constitutional Convention, the new delegates, but to

The first part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are presented in the next section, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

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1 furnish them with enough copies, plus an explanation
2 of copies of those reports, that when they consider the
3 provisions that we recommend as to the Executive, the
4 Legislative and the Judicial branches of Government,
5 provisions as to finance and taxation and so forth, they
6 would at least have some comprehension of what it is we
7 are talking about.

8 This leads into the question of the election
9 of delegates generally and, as you know, a number of
10 groups have already been organized, and more are being
11 organized it seems almost every day, with the idea of ad-
12 vocating the election of the best qualified delegates.
13 It has become increasingly evident that the problem has
14 been and will be to work out some method of coordinating
15 the activities of these groups. I think it is extremely
16 unlikely that there will not be at least one group in
17 every legislative district of the State organized for this
18 purpose, including in the term legislative district,
19 counties where they only have one or two delegates.

20 Unfortunately, or fortunately, depending on how
21 you view it, in some districts there will be more than one

1 such group, and the problem is going to be to coordinate,
2 to unify their efforts, so that they don't dilute the
3 over-all effort and work at cross purposes. This is a
4 real problem.

5 In the discussions which we have had with
6 political leaders, I have made the statement that I made
7 last month to this Commission, that I would not doubt
8 that there would be as many as a thousand candidates for
9 the position of delegate to the Constitutional Convention.
10 The only reaction that I have gotten to that comment,
11 from the persons to whom we have talked, is that it is
12 too low, that there are apt to be more.

13 This has led to the feeling that it would be
14 virtually impossible on a State-wide basis to work out
15 any kind of a coordinating or steering committee. There
16 have been a number of suggestions of trying to work out
17 a nominating committee on a State-wide level but after
18 discussion, each of these come to the same end, that it
19 just didn't seem feasible.

20 It does seem feasible, however, that the groups
21 organized on a district level could be coordinated by some

1 sort of steering committee.

2 I have, following the discussion at the last
3 meeting of the Commission, made it abundantly clear that
4 the Commission will not formally take any position with
5 regard to any delegates to the Convention, and I would
6 assume that by and large the same would be true of any
7 members of the Commission.

8 I do not think that this precludes members of
9 the Commission from exerting their efforts in any and
10 all districts where necessary to see that a group, in-
11 dependent group is organized, or if there are several,
12 that some effort is made to coordinate and unify these
13 groups.

14 Any further suggestions that any of you have on
15 this problem would be more than welcome.

16 I might say that not a day goes by that John
17 and I don't get much more than one or two phone calls on
18 this subject.

19 The status of our report at the moment is this,
20 first off, I am very sorry to say to you what I am sure
21 that all of you have concluded anyhow, and that is that

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1 it is going to be impossible for us to have our printed
2 report ready to deliver by the convening of the Legis-
3 lature on January 18th.

4 This disturbs me very much but I have talked
5 to members of the Commission and their feeling is the same
6 as mine, that it is much more important for us to have a
7 report that we can be satisfied is the best we can pro-
8 duce, than to meet the earlier deadline.

9 We are still under tremendous pressure because
10 even if we are to have it printed and distributed by
11 February 15th, it means we have got an enormous amount to
12 do in a very short time.

13 Most of the work by committees is completed but
14 not all, and the most important matter yet to be consider-
15 ed by the committees is the problem of schedules, or if
16 you want to call it effective dates, and I would like to
17 ask the chairman of each committee to, with his reporter,
18 as soon as possible, and I mean if you can, within the
19 next ten days, not a formal meeting of the committee, but
20 with your reporter go over your part of the Constitution
21 with a fine-tooth comb and decide whether one, all or some

1 parts can go into effect as soon as the Constitution
2 is adopted by the people, or a reasonably short time
3 thereafter, without any great disruption of existing
4 governmental functions or duties and so forth.

5 Secondly, whether it is desirable to postpone
6 the effective date of a part of the provisions recommend-
7 ed, in order to give the Legislature time to pass imple-
8 menting legislation; and, third, and perhaps more
9 critically, whether some parts -- or the effective date
10 of some parts should be extended, in order to not cut off
11 the terms of elected officers, or even appointed boards,
12 in some instances.

13 This undoubtedly presents a serious problem
14 in the case of the committee dealing with the Judiciary
15 Article, and they are aware of it, and I hope will have
16 a report for us very soon.

17 It also presents a problem for the committee on
18 the Executive Department, and to some extent of the com-
19 mittee on the Legislative Department. I do not think that
20 the problem is presented in the same degree, at least,
21 with respect to the other committee reports, but we haven't

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1 make a careful study and I would like each committee
2 and reporter to make that kind of study and even if it
3 is completely negative. In other words, if your conclu-
4 sion is that the part of the Constitution with which you
5 are particularly concerned can go into effect immediate-
6 ly, if you will just let us know that, it will relieve
7 us.

8 The final draft, or the final draft of the
9 preliminary draft, I should say, of the Constitution is
10 on tape. This has posed some problems to us. This is
11 using new equipment that at the moment has slowed us down.
12 We had not wanted to use this and would have been content
13 with the ordinary copies. We could have had it into your
14 hands, but as I think you know, we have been using this
15 machine to put it on tape with the idea that we can very
16 much more quickly arrange to make corrections and re-
17 circulate it. In addition, the use of this tape is going
18 to permit us to use a computer for purposes of making
19 an index which is of tremendous advantage and will be
20 time-saving in the long run. If you find some flaws in
21 the first draft that comes to you, it is inexperience in

1 operating the tape. I still don't know how they erase
2 a hole punched in the tape, but they tell me somehow or
3 other they do it.

4 I think they are all of the matters that I
5 wanted to comment on generally. Is there anything I have
6 left out, John?

7 MR. BROOKS: No, sir.

8 THE CHAIRMAN: Any general comments or matters
9 that any member of the Commission wants to bring up?

10 If not, we will proceed to a consideration of
11 the eighth report of the Committee on Miscellaneous
12 Provisions.

13 You should have with you a copy of the eighth
14 report dated December 3, 1966. That was distributed at
15 the last meeting.

16 DR. JENKINS: Mr. Chairman, I am sorry, I think
17 there is one item which you did not state. Do you anti-
18 cipate further meetings of this -- formal meetings of
19 this Commission, if any?

20 THE CHAIRMAN: Yes, I am glad you mentioned that
21 because I did want to mention it.

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1 I do not anticipate the necessity of having
2 any further meetings of the kind that we have had here-
3 tofore or such as the present meeting, to consider reports
4 of committees and drafts.

5 I think that most of what we yet have to do
6 will be handled by correspondence but it will obviously
7 be quicker to resolve some problems at a meeting.

8 I would therefore ask each of you to keep open
9 on your agenda the third Monday in January, the normal
10 Commission meeting date. If you would please hold the
11 entire morning, afternoon and evening. I think it most
12 unlikely that we will have to call you together for that
13 length of time but we can't tell what problems we may
14 run into with the detailed work of the Committee on Style
15 and other such matters.

16 DR. JENKINS: The 16th.

17 MR. CASE: The 16th.

18 THE CHAIRMAN: I think that's the date. That's
19 correct, the 16th. Dr. Bard.

20 DR. BARD: Mr. Chairman, if the report is finish-
21 ed in mid-February, would the date of submittal be such

General Principles of Chemistry

The study of chemistry is a branch of science that deals with the composition, properties, and changes of matter. It is a fundamental science that provides the basis for understanding the natural world. Chemistry is a dynamic field that constantly evolves as new discoveries are made. The study of chemistry is essential for understanding the world around us and for developing new technologies. Chemistry is a science that is both theoretical and practical. It involves the study of the properties of matter and the changes that it undergoes. Chemistry is a science that is both fundamental and applied. It provides the basis for understanding the natural world and for developing new technologies. Chemistry is a science that is both theoretical and practical. It involves the study of the properties of matter and the changes that it undergoes.

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1 that we will still submit it to Governor Tawes?

2 THE CHAIRMAN: This is -- I don't know, to
3 answer you frankly. It is one of the problems. We just
4 don't know.

5 If we have our report printed for circulation
6 by the middle of February, they tell me I would have to
7 have the completed typewritten draft by the first of
8 January which obviously is not possible, and I am hoping
9 that we can shorten the time by giving the printers a
10 part of the material. This increases their job and
11 increases ours, but we are not going to be able to have
12 one clean typewritten draft of the whole report before
13 they start.

14 It makes it very important, though, for each
15 of the committee chairmen to ride herd on their reporters
16 who are presently supposed to be assembling for us and
17 re-editing the committee reports, so as to phrase them
18 in terms of the Commission's Report, rather than the
19 committee's report.

20 We need this badly, just as quickly as we can
21 get it. Mr. Scanlan.

1 MR. SCANLAN: What about the proposed Enabling
2 Act. Will that be in shape to be placed before the
3 General Assembly early in the next session?

4 THE CHAIRMAN: Yes, we think that in principle
5 the Enabling Act has been approved by the Commission and
6 there is some editorial work to be done on the statute
7 itself which I think we can clear by circulation to the
8 Commission members, or actually I don't think it requires
9 a resubmission to the Commission because all matters of
10 principle have been decided.

11 We have discussed with the legislative leaders
12 of the previous sessions the best method of handling this
13 matter and I think that if the procedure which has been
14 discussed works out, it will be very good procedure all
15 around.

16 The Bill would be introduced by the presiding
17 officers in each House simultaneously. Now, if the pre-
18 vious presiding officers are the new presiding officers,
19 this is decided. Now, if we have new presiding officers,
20 we don't know what their views will be.

21 Also, our present thinking is to have the rules

1 of the House and the Senate which normally are presented
2 at the opening session and adopted on a voice vote with-
3 out change, simply the rules of the preceding Legislature,
4 will be amended prior to such submission to provide as
5 a standing committee of both Houses a joint committee
6 on the Constitution. The idea being that this joint com-
7 mittee would carry through all problems concerned with the
8 Constitution from the beginning of the next session until
9 the Constitution is adopted. This would, of course,
10 enormously facilitate, not only the matter of decisions
11 on the Enabling Act, and the election of delegates, but
12 budgetary problems in connection with the Constitution,
13 and problems of housekeeping arrangements for the Consti-
14 tution, publicity to be given to the work of the Convention,
15 and publication of the Constitution, budgetary appropria-
16 tions for that, and, more importantly, implementation of
17 the provisions of the Constitution to the extent required
18 by legislation.

19 This hasn't been thought through completely,
20 but the idea is that it might be much quicker, much better
21 and much easier to have the implementing legislation go

1 through such a joint committee which is then familiar
2 with the over-all problems of the new Constitution,
3 rather than have it go in as it would in the normal course
4 to various other standing committees.

5 Now, here again, this is only at the moment
6 a matter of initial discussion and, since we don't know
7 who the officers of the next Legislature are going to be
8 for a certainty, this whole procedure could be canceled,
9 but at the moment, this looks like it is it.

10 I might add -- your question about that trig-
11 gered my recollection on this, that John and I have,
12 since the last meeting of the Commission, had a very
13 pleasant and successful, I think, meeting with Governor-
14 Elect Agnew, have acquainted him with the work of the
15 Commission and with what we propose, and what we estimate
16 is needed in the budget. He is, as I think all of you
17 knew anyhow, intensely interested, and desires to be kept
18 fully informed. He is also very much interested in the
19 problem with respect to the election of delegates.

20 . At his request, we are meeting with his budget
21 advisors tomorrow to work out the details of the budget.

1 The only difference, I think, with respect to the budget
2 that is in any way different from what we talked about
3 before, and I may have even mentioned that, is that the
4 Budget Bureau suggested that we would have to have a
5 substantial amount in the budget for publication of the
6 Constitution in the purely formal manner in which session
7 laws are published by newspaper advertisement, and in
8 addition, by brochure or explanatory pamphlet, or some-
9 thing of this sort, so that the total cost of the Con-
10 vention would be perhaps several hundred thousand dollars
11 more than we anticipated. We have been told it would take
12 at least that much for printing.

13 Now, are there any other questions? Mr. Gentry.

14 MR. GENTRY: The one open item of my committee
15 is the preamble, and if this is to be the last meeting,
16 will that be discussed today or --

17 THE CHAIRMAN: No, I would still like to have
18 the members of the Commission have before them an entire
19 complete draft of the Constitution tied together as much
20 as possible before you decide on the language of the pre-
21 amble, and I think we can handle that either by mail or

1 at the next meeting.

2 In that connection, let me mention to you
3 that it has been awfully difficult to try to work out
4 an arrangement of the Constitution with the pieces that
5 we have, so that in order to get something on paper, we
6 have put all together. Undoubtedly, many of you are
7 going to say, Well, this is a very awkward arrangement
8 in some particulars. If so, call it to our attention.
9 We have also in mind that the staff will do some rather,
10 and the Committee on Style, some rather elaborate re-
11 arrangement. Any further questions?

12 One other thing I did want to mention, I don't
13 know how many of you saw the special program put on the
14 air by Station WJZ at 11:30 on last --

15 MR. BROOKS: Friday.

16 THE CHAIRMAN: Yes, December 9th. They had
17 their cameras from half past 9 in the morning until 4
18 o'clock in the afternoon at the Goucher conference, and I
19 wondered how in the name of goodness they would ever make
20 anything worthy of a TV broadcast.

21 They had a special on right at the conclusion of

The first part of the paper discusses the importance of the
study of the history of the United States. It is
important to know the history of the United States
because it helps us to understand the present and
the future. The second part of the paper discusses the
importance of the study of the history of the world.
It is important to know the history of the world
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importance of the study of the history of the United States
and the world. It is important to know the history
of the United States and the world because it helps
us to understand the present and the future.

1 the news, it was about 11:20, and I think it was un-
2 questionably one of the finest pieces of camera reporting
3 of a conference of that sort that I have ever seen, and
4 I think it is the kind of helpful publicity that the Com-
5 mission is seeking because it made it abundantly clear
6 that it was going to be very necessary to elect delegates
7 of the highest possible caliber.

8 All right, let's move ahead, then, to the con-
9 sideration of the eighth report of the Committee on Mis-
10 cellaneous Provisions. You have the report from the last
11 meeting and you should have before you, passed out today,
12 a Xerox copy of a research memorandum prepared by Mr.
13 Lasson. Mrs. Bothe.

14 MRS. BOTHE: I believe, Mr. Chairman, that we
15 have only the provisions of Article XV, Section 11 in
16 our eighth report before the Commission today.

17 THE CHAIRMAN: That's correct.

18 MRS. BOTHE: Starting on page 3 of the report.

19 MR. BROOKS: Does anyone need a copy of the re-
20 port, the eighth report?

21 MRS. BOTHE: Has everybody got the report?

1 Well, our Committee on Miscellaneous Provisions
2 has throughout the year and more sessions of this Com-
3 mission been recommending deletion of various provisions
4 in the current Constitution and have been getting them
5 through with very little debate. With this last report
6 which is, I believe, also the last formal piece of busi-
7 ness before the Commission, we are again following our
8 usual pattern and recommending that the subject matter
9 of the particular kind, this time Section 11 of Article
10 XV not be included in the new Constitution, but apparent-
11 ly it is not quite as simple as some of our other pro-
12 posals to the Commission.

13 As those who were here at the last meeting re-
14 call, and because a number were not here, the matter was
15 not pursued then. It came up before the Commission at
16 the past meeting and on a motion to defer until all
17 members, or most of the members of the Commission were
18 able to be present, it comes up today as a special order
19 of business.

20 Section 11 of Article XV reads: No person who
21 is a member of an organization that advocates the over-

1 throw of the Government of the United States or of the
2 State of Maryland through force or violence shall be
3 eligible to hold any office, be it elective or appoint-
4 ive, or any other position of profit or trust in the
5 government of, or in the administration of the business
6 of this State or of any county, municipality or other
7 political subdivision of this State.

8 This was an amendment to the Constitution ap-
9 proved by the voters by an overwhelming vote in 1948,
10 after the General Assembly passed the enabling legislation
11 in its session in 1947.

12 Following the passage of this amendment, the
13 General Assembly appointed a commission known as the Ober
14 Commission which drafted implementing legislation which
15 now appears in Article 85A of the Code and which makes
16 various provisions, in order to be certain that no person
17 who holds any office of profit or trust and so forth is
18 a subversive. It also places some criminal penalties on
19 those who attempt to do so.

20 The committee has recommended, and I believe it
21 is the unanimous recommendation, the deletion of this

1 section, and in doing so, as Congressman Miller said
2 when he went out the door the other day, we are certain-
3 ly not recommending that the Government be filled with
4 subversives as it was felt by the deletion of this
5 section.

6 It is of fairly recent origin. Why it was con-
7 tained in the Constitution, I don't think we were able
8 to ascertain, though we had some considerable research
9 done into the background of it, and Lew Noonberg, the
10 reporter, is going to tell you a little bit about a
11 possible conflict with Article LXXXV-A, in the event that
12 it is deleted from the new Constitution. We did not, how-
13 ever, discuss why it was, exactly why it was felt neces-
14 sary to place the provision in the Constitution. Only
15 four States have done so, besides Maryland, and in recom-
16 mending the deletion of the section, we do not make any
17 recommendation one way or the other with regard to
18 legislation such as Article LXXXV-A on subversive activities.

19 I would be less than frank if, as chairman of
20 the committee, I would not admit that I wear another hat
21 as well. I am one of counsel in a suit now pending in

1 the Supreme Court which would make the subversive
2 Article LXXXV-A, would declare it to be unconstitutional
3 itself, but I don't feel that my participation in that
4 case has in any way affected or in any significant way
5 affected my objectivity with regard to constitutionality.

6 We have had absolutely no sentiment on the com-
7 mittee favoring this type of provision in the Maryland
8 Constitution.

9 I think that many of you are aware, after our
10 last experience in drafting the Constitution, that this
11 is not the kind of provision that a modern Constitution,
12 or the one that we have proposed up to this point, would
13 contain.

14 Our proposals have dealt with specific areas
15 of the legislative, judiciary and executive provisions
16 of the Constitution, and this rather stands out as a non-
17 secular or sore thumb, this blanket prohibition against
18 mother and God, as it stands.

19 We felt, while we are not against the important
20 purpose of the provision, that it should not have consti-
21 tutional status. Now, there was a possible area of

1 necessity for continuing it in the Constitution. The
2 Miscellaneous Provisions Committee in its second report,
3 approved by the Commission, dealt with the subject of
4 oaths, and the oath prescribed or to be prescribed in
5 the new Constitution, as recommended by the Commission,
6 will state as well that no other oath, declaration or
7 political test, other than the one in the Constitution,
8 which merely will swear allegiance to the State and
9 Federal Constitutions, should be prescribed.

10 There was a possibility that, without the
11 additional constitutional provision which Section 11 of
12 Article XV now contains, that an Ober Bill or subversive
13 activities law could be unconstitutional under our Maryland
14 Constitution, and I had understood that a paper that Mr.
15 Lasson prepared was circulated on that subject to the
16 Commission before the last meeting. Mr. Eney informs me
17 this was not done and suggested that we call upon Mr.
18 Noonberg to explain the conflict for the enlightenment
19 of the Commission. Will you do that, Lew?

20 MR. NOONBERG: The difficulty that the committee
21 had is in determining whether or not the elimination of

1 Article XV, Section 11, would, by virtue of its elimina-
2 tion, render unconstitutional the Ober Law which is
3 Article LXXXV-A.

4 We point out two problems. First, as to the
5 Constitution as it exists today, Article XXXVII of the
6 Declaration of Rights provides, among other things, that:
7 Nor shall the Legislature prescribe any other oath of
8 office than the oath prescribed by this Constitution;
9 and then we also have enacted at a later date Article
10 XV, Section 11.

11 Well, the problem is that if you eliminate
12 Article XV, Section 11, you thereby make the Ober Law
13 vulnerable to attack, as being unconstitutional under
14 the Maryland Constitution.

15 The question that is now before the Supreme
16 Court concerns solely the constitutionality under the
17 Federal Constitution of the Ober Bill, so that the issue
18 boils down to whether or not the Ober Bill is another
19 oath which is prescribed by Article XXXVII and, if it is
20 another oath, is it saved by Article XV, Section 11.

21 Then, there is really a third problem the com-

1 mittee and now -- and the Commission, rather, has adopted
2 Article I, Section 6, which uses the terms: Oath,
3 declaration or political test. The third problem, then,
4 is if it was constitutional, and when I use the word con-
5 stitutional, I mean under the State Constitution, if it
6 was constitutional under the present Constitution, does
7 the addition of the words, declaration or political test
8 render it unconstitutional.

9 We asked Mr. Lasson to review this question for
10 us, review the question of whether or not the elimination
11 of Article XV, Section 11, would affect the constitution-
12 ality of the Ober Law. The answer is unclear. There
13 really is one case in the Court of Appeals of Maryland
14 known as Shub versus Simpson which indicates two things.
15 First, it indicates that an affidavit is not by its nature
16 an oath of office, as contemplated by Article XXXVII.
17 It does this really, though -- this is not the holding
18 of the case and it is not clear whether it applies across
19 the board to all sections of the Ober Law. However, that
20 does indicate, in our opinion, that the Ober Law could
21 stand without Article XV, Section 11.

1 Secondly, though the Court of Appeals does
2 recognize that Article XV, Section 11, and the Ober Law
3 were contemporaneous and are interdependent, just how they
4 are interdependent the Court doesn't really explain, so
5 that we are somewhat in a quandary.

6 We spoke with -- both Mr. Lasson and myself
7 spoke with Bob Murphy, who at the time we spoke with him
8 was Attorney General, and who has now, of course, been
9 appointed as the Chief Judge of the Intermediate Court of
10 Appeals, and Mr. Murphy is quite emphatic -- well, I
11 might state that, as a preface, Mr. Murphy is quite con-
12 versant with the Ober Law and with Article XV, Section 11.
13 He personally has handled litigation in this field for
14 the State, and it is his opinion that the Ober Law can
15 stand without the necessity of having Article XV, Section
16 11; and it is primarily based upon his opinion, and he
17 stated that he was quite willing to be quoted to that
18 effect, and I think he has now been quoted by most of the
19 newspapers to that effect, that Article -- the Ober Law
20 could stand without Article XV, Section 11.

21 That, his opinion, plus the Court of Appeals of

1 Maryland's decision in Shub versus Simpson leads our
2 committee to the conclusion that the Ober Law could stand
3 without Article XV, Section 11, but it is hard to be
4 certain in light of the existing law, so we say that
5 there is a possibility that the Court of Appeals of Mary-
6 land could use the elimination of Article XV, Section 11,
7 as a possible basis for holding the Ober Law unconsti-
8 tutional in the future, assuming that the Supreme Court
9 doesn't throw it out under Federal constitutional grounds.

10 Well, if it is valid under the Maryland Law
11 as it exists today, the next question is whether or not
12 Article XV, Section 11 -- or if it is unconstitutional,
13 does Article XV, Section 11, save it? Well, it is not
14 clear whether it does or not, but if it is constitutional
15 today, there is a possibility that Article XV, Section 11,
16 does save it by virtue of its being enacted later than
17 Article XXXVII of the Declaration of Rights, and the fact
18 that it was enacted contemporaneously with the Ober Law.

19 So without any sense of real assurance, we
20 suggest that it would be upheld without Article XV,
21 Section 11.

1 Additionally, there is the problem that we
2 changed the wording slightly in the suggested -- the
3 Commission's suggested language that no other oath,
4 then we add, declaration or political test; do the terms
5 declaration or political test render the Ober Law un-
6 constitutional. We feel, to be frank about this, the
7 committee did not research this question, but it is ob-
8 vious that the use of the terms declaration or political
9 test add to the questionability of the Ober Law, in light
10 of this oath provision, so that the committee is -- I
11 might add the language which the Commission is suggesting
12 is contained in Section 1.07 of the model, and the model
13 indicates that forty-three States provide for language
14 which states that no other oath, declaration or political
15 test shall be required for any public office or employment.
16 So, without coming to a firm conclusion, we feel that
17 probably the Ober Bill will remain -- the Ober Law will
18 remain constitutional but we have no real certainty of it.

19 THE CHAIRMAN: Mr. Bond.

20 MR. BOND: Mr. Chairman, I am somewhat amazed
21 at the great solicitude of the committee for the Ober Law.

1 Every change we have made in every constitutional --
2 every phrase of the Constitution that we have adopted
3 changes laws, and yet now I hear a great solicitude over
4 one law, and I don't understand it.

5 MRS. BOTHE: I might make one comment there as
6 to our particular committee's assignment. We have had
7 a lot of matters come within our purview where legisla-
8 tion was desirable but where constitutional law was not,
9 and perhaps we fell into that habit when we made this
10 recommendation with due concern for the existing legis-
11 lation. We would obviously prefer not to have to get
12 into the virtues of antisubversive legislation, such as
13 the Ober Bill, and I think that the Commission, if
14 possible, should seek to avoid that as well, despite my
15 personal feelings. It is to be hoped that the Commission
16 doesn't have to decide on the rights and wrongs of anti-
17 subversive legislation, such as the Ober Bill. I think
18 we all have our personal views pro and con, and perhaps
19 largely con.

20 THE CHAIRMAN: Mr. Scanlan.

21 MR. SCANLAN: May I ask the distinguished chair-

1 lady, the eminent counsel, whether the thrust of the
2 attack on the Ober Law in the case now pending before
3 the Supreme Court is broad enough that it might cast into
4 jeopardy, if you are successful, provisions like the pro-
5 posed -- I mean not the proposed -- like Article XI --
6 Article XV, Section 10? My point --

7 THE CHAIRMAN: Section 11.

8 MR. SCANLAN: Section 11. My point is, if the
9 Supreme Court should knock down the Ober Law on the basis
10 that it would cast out Section 11, Article XV, it would be
11 an exercise of futility for us to recommend it to stay
12 in the State Constitution.

13 MRS. BOTHE: I think that is one of the argu-
14 ments that might be used. However, in all fairness, I
15 am sure --

16 MR. SCANLAN: I am not asking a question, I am
17 making an argument.

18 MRS. BOTHE: I don't think the Supreme Court
19 or any Court is going to say that a State can preclude
20 subversives from being employed by the State, so that the
21 expression of sentiment contained in Section 11 would be

1 perpetuated no matter how successful we would be in
2 overthrowing the Ober Bill and all other laws of this
3 nature.

4 The Supreme Court has already held that the
5 States cannot criminally enforce statutes against sub-
6 versive activities as applied to the Federal Government
7 in the Nelson case, and insofar as our present Ober Law
8 purports to prevent subversion against the Federal Govern-
9 ment, it is ineffective and unconstitutional.

10 In the Shub case which Lew referred to, the
11 Court held that the State could not preclude an individual,
12 a State individual from running for Federal office under
13 the terms of the Ober Bill, so that in some part it is
14 already ineffective.

15 Section 11, however, in its expression of a
16 view would stand untrammelled, I think, forever. I don't
17 believe that the section itself would be unconstitutional,
18 by virtue of any decision that the Court makes, it would
19 just be ineffective.

20 THE CHAIRMAN: Mr. Sykes..

21 MR. SYKES: Can I ask whether the committee is

1 really of the opinion that you just expressed? I would
2 particularly like some guidance as to whether or not
3 the committee's reporter feels that the language of
4 Section 11 of Article XV, as it now reads, is clearly
5 unconstitutional under the Federal Constitution. If the
6 language means what it says ^{it} in/and that the only way you
7 can possibly save this is to stand on your head and read
8 it to say what it doesn't say. It provides that a per-
9 son who is a member of an organization that advocates the
10 overthrow of the Government of the United States or the
11 State, through force or violence, shall be ineligible
12 to hold office. It doesn't say anything about knowledge
13 of the purposes. It doesn't say anything about the ex-
14 tent of the advocacy, whether it is teaching and academic
15 doctrine, or has a present tendency to promote the use of
16 violence.

17 As I remember the Scales case and the other
18 Supreme Court cases, this language of Section 11, if we
19 reenact it would be clearly violative of the Federal Con-
20 stitution. It would certainly have to be recast, and I
21 don't -- that's another question -- but I suggest that if

1 you reenact Section 11 of Article XV of the Constitution
2 of Maryland in the light of the present Supreme Court
3 decision, then you would be violating any obligation you
4 all have and we have to support the Federal Constitution.

5 MRS. BOTHE: I guess you are right. This was
6 exactly the argument used in the Supreme Court.

7 MR. CASE: That's the question.

8 MRS. BOTHE: In the Gerende case, and soon-to-
9 be Judge Murphy who was representing the State as a mem-
10 ber of the Attorney General's staff told the Supreme
11 Court that this wording wouldn't mean what it said because
12 the implementation of the Constitution and of the Ober
13 Law was such as to the oath which people are required to
14 sign, in order to prove their worthiness under this section
15 did state and define subversive organization. The Supreme
16 Court, in its decision, said, Well, so long as the State
17 is actually enforcing its laws in a constitutional manner
18 that this will -- we will not prevent the State from hav-
19 ing a general provision which is properly carried out.

20 Now, I agree with you, Mel, but the Courts have
21 said that we can do this --

1 MR. SYKES: Well, Mr. Case asked what the
2 question was. Can I just put it very succinctly, the
3 question is, Is this the way to write a Constitution?

4 THE CHAIRMAN: I don't think that is the question.
5 The committee has recommended this provision not be in-
6 cluded and no one has moved that it be included or that
7 that recommendation be overruled.

8 I think the real question is whether the action
9 heretofore taken by the Commission in approving the form
10 of oath recommended in the early report of the Commission
11 which is in turn modeled after the model State Constitution
12 in the language that it employs, would prevent the Legis-
13 lature, if it thought wise to do so, from enacting any
14 kind of meaningful and proper legislation to control sub-
15 versives in Government.

16 What is the section, Lew, that we already have
17 approved, the oath section?

18 MR. NOONBERG: The approved section is Article I,
19 Section 6.

20 THE CHAIRMAN: Replacement of existing Article I,
21 Section 6.

1 MR. NOONBERG: Yes, which encompasses Article
2 XXXVII, also, of the Declaration of Rights, part of it.

3 THE CHAIRMAN: Now, that contains the language
4 that no other oath, declaration or political test shall
5 be required. Can you tell me whether the committee had
6 anything before it as to the scope of that phrase, other
7 than the fact that it is in the model State Constitution?

8 MR. NOONBERG: No, sir, we did not.

9 THE CHAIRMAN: Is there any view as to whether
10 the phrase declaration or political test could conceivably
11 prevent the Legislature from enacting an otherwise proper
12 and meaningful statute as to subversives employed in State
13 Government?

14 MR. NOONBERG: We definitely feel that is con-
15 ceivable.

16 THE CHAIRMAN: Mr. Scanlan. I think that's
17 the question that is before us.

18 MR. SCANLAN: In doing some research for a
19 case awhile back, on the question of political oaths, I
20 pledge to support the candidates, principles of the Demo-
21 cratic Party, I seem to recall encountering a New Jersey

1 case where the precise point was presented. The New
2 Jersey Constitution, I believe, had provisions similar
3 to the model. There was some sort of a subversive
4 activity law. I didn't pay too much attention to the
5 case because it wasn't on the point I was engaged in
6 pursuing, but there are cases, for instance, where States'
7 statutes have permitted parties to require oath of
8 allegiance to the political party, to be binding on the
9 man after elected to public office, and that is struck
10 down. If my recollection of this New Jersey case is cor-
11 rect, there is indeed a problem. At the time, I wasn't
12 thinking about it, but -- it might not be New Jersey --
13 but I think it is, and fairly recently.

14 THE CHAIRMAN: Mr. Gentry.

15 MR. GENTRY: As a member of the committee who
16 supports the deletion of Section 11 of Article XV, I
17 would like to state my reasoning which is different a
18 little bit.

19 First of all, I firmly and fully support the Ober
20 Law, but I think it is perfectly consistent with that
21 position to offer the deletion of this section because

1 I don't think it is necessary.

2 I feel that the oath which we have voted on
3 to retain which says in so many words: I swear to uphold
4 and support the Constitution, says exactly and more em-
5 phatically what Section 11 says, and it puts the man on
6 notice that Section 11 does not require any oath in it-
7 self. It depends, for its implementation, on the Ober Law,
8 where^{as}/the oath which we now have found elective and
9 appointive officials to take, does say: I swear to uphold
10 and support the Constitution, and with that, I myself felt,
11 thought it was stronger, said it once and said it better
12 than the inclusion of two sections saying much the same
13 thing.

14 Further, I also asked, during the deliberations
15 of the committee, and stated that I would support the
16 deletion of Section 11 only if it were found, in the
17 course of the research, that the Ober Law was not de-
18 pendent on it for its existence and Mr. Murphy, who has
19 acted in these cases, stated that quite emphatically, and
20 feeling that way, I say we could delete this.

21 THE CHAIRMAN: But that doesn't answer the

1 question, does it, Mr. Gentry, because I assume from
2 what Mr. Noonberg said that what Mr. Murphy was expressing
3 his opinion on was the present Article XXXVII of the De-
4 claration of Rights, rather than what we have proposed?

5 MR. GENTRY: Well, I don't feel that the ad-
6 dition of these model languages, such as any other
7 political test or declaration were necessary, and they
8 weren't considered at the time we acted on the oath and,
9 therefore, we can go back and change that and just say
10 that there shall be only one oath of office and it is
11 this, and state it.

12 THE CHAIRMAN: I understand that and I think
13 that is maybe one of the questions that we will have to
14 consider, but I must have misunderstood your other comment.
15 I thought you were indicating that Mr. Murphy had indi-
16 cated that the use of the words declaration or other
17 political test, such as we propose, would affect his
18 opinion.

19 MR. GENTRY: I don't see any magic in those
20 words, or any reason for their inclusion. We were not
21 considering that at the time we considered this particular

1 deletion. If we want to go back and reconsider that,
2 that is another matter that I would subscribe to.

3 THE CHAIRMAN: Any further comment? Any other
4 questions? Any motions?

5 JUDGE ADKINS: I will make a motion. I would
6 like to propose that Section 11 be amended and as such
7 reinstated, to be amended to read: No person who advocates
8 and so forth. With that addition, I move it be included
9 in the Constitution.

10 MR. HOFF: I second the motion.

11 THE CHAIRMAN: Does someone second it?

12 MR. HOFF: Seconded.

13 THE CHAIRMAN: Any discussion, Judge Adkins?

14 JUDGE ADKINS: No, except to say that I think
15 that in view of the potential problems that are raised,
16 it certainly seems to me it may be unnecessary, but it
17 certainly seems to me, it cannot be harmful to provide in
18 the Constitution that a person who advocates the over-
19 throw of the Government of the United States or of this
20 State should not be eligible to hold office.

21 DR. BURDETTE: By force or violence.

1 JUDGE ADKINS: By force or violence. I think
2 if you remove the qualification that he be a member of
3 an organization that advocates, you have in some measure
4 eliminated a substantial number of objections to this
5 type of approach. If you limit it to the advocacy of
6 the individual person, I think then the provision has
7 merit in the Constitution.

8 THE CHAIRMAN: Mr. Bond.

9 MR. BOND: I would just like to ask Judge Ad-
10 kins, how do you determine what advocacy consists of?
11 How do you prescribe this selected test to someone who
12 wishes to qualify for office?

13 JUDGE ADKINS: I would think the Courts would
14 have no problem in determining that if it came to a test.

15 THE CHAIRMAN: Mr. Gentry.

16 MR. GENTRY: I would like to ask Judge Adkins
17 a question along this line, that in all of this area,
18 we are depending to a large extent upon the personal good
19 faith of the particular individual in owning up to what
20 he advocates, or sponsors, or what-have-you, and if we
21 are dealing with such a person, what would this new

1 Section 11 do that the oath would not do? Could not
2 the man -- could the man in good faith take an oath that
3 says: I support and swear to uphold the Constitution?

4 JUDGE ADKINS: Well, I suppose if you want to
5 get philosophical about it, if somebody is advocating
6 the overthrow of the Government, then is he necessarily
7 in good faith bound by an oath administered by the Govern-
8 ment which he is attempting to overthrow? So it doesn't
9 seem to me that accomplishes something that you are try-
10 ing to do, to simply provide some way to prevent people
11 who advocate the overthrow to become public officials
12 and hold positions of trust.

13 MR. GENTRY: Then either one of two things
14 would happen, either prior to his taking the oath he
15 would say he declines to take it, in which case he
16 couldn't hold the office because that is a requirement
17 for the office, or on the other hand, he would take his
18 oath and then violate it, in which case he would be sub-
19 ject to prosecution for violation of his oath.

20 THE CHAIRMAN: Mr. Hoff.

21 MR. HOFF: My own position on this is very simple,

1 or perhaps simple-minded. I can't help but feel that
2 it will -- that when we are writing a Constitution, it
3 is certainly within the scope of, let us say, constitu-
4 tional embrace, to put a provision in there that will
5 prevent enemies of the Constitution from obtaining of-
6 fices from which they could overthrow the Constitution
7 and our form of government. I think it is a very simple
8 matter and very proper matter to have something of this
9 sort in the Constitution. I don't believe that a simple
10 law may be adequate for the purpose of preventing anti-
11 governmental, let us say, subversives, from seeking or
12 obtaining office in our State Government. I fear very
13 much that the Supreme Court might knock out such a law
14 in a hurry, unless it is sustained by some constitutional
15 provision.

16 THE CHAIRMAN: Mrs. Freedlander.

17 MRS. FREEDLANDER: As a member of the committee
18 who approved the deletion of this section, I would like
19 to suggest that knowing the communication media as they
20 exist today, should a person put himself forth to run
21 for office in a primary election, undoubtedly he would

1 be exposed, were he a subversive, long before he was
2 elected and certainly governors and others do not appoint
3 subversives without a thorough review of their records.
4 The practical aspects of this, it seems to me, make this
5 provision unnecessary.

6 THE CHAIRMAN: Mrs. Bothe.

7 MRS. BOTHE: I am very astounded that the Chair-
8 man of the Committee on the Executive should be the one
9 who makes this motion. His committee has been very em-
10 phatic in its desires adopted by the Commission to give
11 broad latitude to the Chief Executive, and presumably
12 to all executive departments for a free hand in appoint-
13 ments, not even subject to the will of the Legislature,
14 as I recall.

15 This provision, I think, is an insult to the
16 would-be appointed people. It presumes that they have to
17 be constitutionally prevented from appointing subversives.
18 I have strong doubts that an executive would choose to
19 do so knowingly and, of course, if he did so unknowingly,
20 this provision would be of no avail as to those who seek
21 to run for elective office. As I have already said, those

1 who wish to run for Federal office would not be covered
2 by this provision. Those who seek to run for office
3 which is covered, this is an insult, in my opinion, to
4 the voters of the State and the whole elective process.
5 A person who seeks elective office does so with a campaign
6 and on a platform, and to have in our basic law a pro-
7 hibition against someone even seeking office whose views
8 include advocacy of the overthrow of the Government is
9 inimical of the purpose of our Constitution itself.

10 I see no useful or theoretical valid purpose
11 to be served by this kind of provision.

12 THE CHAIRMAN: Mr. Martineau.

13 MR. MARTINEAU: I would like some supporter of
14 this provision to tell me what -- to answer Mr. Gentry's
15 question of what does this add to the Article I, Section
16 6 oath. If it adds something, it seems to me there might
17 be some merit in it. If it doesn't add anything to it,
18 I can't see any point to putting it in.

19 THE CHAIRMAN: Any further comment or discussion?
20 Mr. Sykes.

21 MR. SYKES: I am going to vote against the

1 motion for the additional reason that it doesn't even
2 do, I think, what it is intended to do.

3 The Ober Law is in terms of membership in an
4 organization. If the Ober Law is going to be unconsti-
5 tutional because of something else we have done under
6 the Constitution, it is not going to be saved by a con-
7 stitutional provision that deals only with the political
8 position of an individual.

9 In addition, I think that if anybody can take
10 the oath, provided in Article I, Section 6, and still
11 be a subversive, he is not going to be stopped to any ex-
12 tent by the additional oath that is provided for in the
13 proposed Constitution.

14 THE CHAIRMAN: Dr. Michener.

15 DR. MICHENER: I would just like to speak to
16 one point of the question that was raised before as to
17 what constitutes advocacy, and the answer was that this
18 will be determined by the Courts, and this sort of
19 frightens me in some way from experience with my own
20 family.

21 As I mentioned before, my family has been

1 Quaker since the time of William Penn, and during World
2 War II a very close relative of mine was put in prison
3 with a fifteen-year sentence for refusing to register
4 for the draft, and the Judge in Court, when he pronounced
5 sentence was saying that the young man was refusing, or
6 'was trying to overturn the Government of the United States,
7 and it seems to me that this can be interpreted in those
8 terms.

9 THE CHAIRMAN: Any further comment? Mr. Gentry.

10 MR. GENTRY: Speaking against the motion, I
11 would just like to point out that I think the consti-
12 tutional drafters tend to be swayed too much by the times
13 in which they live and go too far to correct some parti-
14 cular thing. If we look back to 1776, when the Declara-
15 tion of Rights in our present Constitution was written,
16 we see that, provided in Article I, that all persons
17 have the inalienable right to alter, reform or abolish
18 their form of government in such manner as they may deem
19 expedient. Further, in Article VI they wrote that the
20 people have the -- may, and of right ought to reform the
21 old, or establish a new Government; the doctrine of non-

1 violence against arbitrary power and oppression is
2 absurd.

3 Now, these are the things that were thought of
4 at that time because the people were moved by the revo-
5 lutionary spirit of 1776, and what we have in the Con-
6 stitution today and what we are talking about was cer-
7 tainly and obviously moved by the hysteria which surround-
8 ed the McCarthy era, at the time it was written. I think
9 it went too far and I think now is the time we ought
10 to back off to a position of clear understanding and
11 write a Constitution which all people can live with.

12 THE CHAIRMAN: Any further discussion? Dr.
13 Burdette.

14 DR. BURDETTE: I do want to associate myself
15 with Mr. Sykes' point which is leveled against the
16 language, a member of an organization, because of the
17 difficulty in identifying whether the person knows any-
18 thing about the organization. I should like to ask a
19 question, Mr. Chairman, which would enlighten me a bit.

20 Now, as I understand it, we have, through some
21 process, gotten into our draft language that no other

1 oath, test or declaration; I am not sure where the
2 adjective political comes in, whether it goes just to
3 declaration or goes also to test.

4 THE CHAIRMAN: Test.

5 DR. BURDETTE: It goes only to test?

6 THE CHAIRMAN: Oath, declaration or political
7 test.

8 DR. BURDETTE: Now, my question is raised on
9 the point as to whether or not that language may need
10 some strengthening to permit an executive, in making an
11 appointment, to make some inquiry about the views of in-
12 dividuals who are appointed. Now, this, of course, is
13 a very delicate matter, but still we say that would come
14 out in a campaign. How does it come out in the executive
15 appointment? I am really raising the question as to
16 whether we need now to strengthen this problem, as Judge
17 Adkins may have attempted to strengthen this point, or
18 whether we need, as the Chairman has raised the question,
19 to examine the implications of political tests.

20 THE CHAIRMAN: I would think that what you say
21 is true. That's not the question immediately before us,

1 but I too share the concern that by the addition of the
2 words declaration or political test in the substitute
3 for Article I, Section 6, we may perhaps have gone too
4 far and I think we can discuss that after we conclude
5 the discussion of this motion. Mr. Case.

6 MR. CASE: Mr. Chairman, I really haven't any
7 brief with this section one way or the other because I
8 was tweedle-dum, tweedle-dee, but in answer to Mr. Mar-
9 tineau's question and some others, as to what this
10 section might do that is not accomplished by Article I,
11 Section 6, I think the answer -- I think it does do some-
12 thing, and I think the answer to it probably lies in
13 the language: Office of profit or trust which is used
14 in Article I, Section 6, and in the language: Or any
15 other position of profit or trust, used in Section 15 --
16 Section 11 of Article XV. Now, the difference is simply
17 this, the words: Office of profit or trust, have taken
18 on a rather definitive meaning, although it is somewhat
19 elusive at times to determine under the decisions of the
20 Court of Appeals, but generally speaking, it means some-
21 body who exercises a portion of the State's sovereignty

1 in a broad sense. Position, on the other hand, has an
2 entirely different meaning and does not embrace this
3 broad scope, so that it would be possible, for example,
4 for a man to be appointed to a position of office and
5 still not have to take an oath. A good example that
6 comes readily to mind would be the Chief Examiner of the
7 State Insurance Department. He undoubtedly has a position
8 of trust because under his guidance are made the various
9 examinations of companies doing business in this State,
10 and upon his recommendations, many many business judgments
11 have to be made which are vital to the persons concerned.
12 He doesn't take an oath.

13 I would take it that if Article XV, Section 11
14 were in the law, and if it were found out that he was
15 in fact a member of an organization that was subversive,
16 as this term is used, he could be summarily fired because
17 I would think this would probably be interpreted as being
18 self-executed. He would have gotten in. He wouldn't
19 have violated any oath because he wouldn't have taken any
20 oath. He would be there, and if this section weren't in
21 the law, I would guess that there would have to be some

1 administrative procedures bearing on cause for his
2 dismissal. Whether that would or wouldn't prevail, I
3 don't know, but I would think in these types of positions
4 in the State Government, Article XV, Section 11, would
5 add some thrust.

6 THE CHAIRMAN: Any further discussion? Mr.
7 Martineau.

8 MR. MARTINEAU: I agree that it probably goes
9 to something other than office, but shouldn't the Con-
10 stitution only be concerned with office and leave it up
11 to the Legislature to impose this sort of penalty with
12 respect to position?

13 My own feeling would be that the Legislature
14 could clearly do this with respect to any position.

15 MR. CASE: You are not convincing me that the
16 section is not tweedle-dum or tweedle-dee. I am merely
17 trying to say what I think the answer to your question is.

18 THE CHAIRMAN: I think we ought to avoid the
19 same person speaking any more. I think most people have
20 spoken. If someone who has already spoken still wants to
21 make a point that he feels important, go ahead.

1 MRS. BOTHE: I just want to make one point.

2 THE CHAIRMAN: Mrs. Bothe.

3 MRS. BOTHE: That came up in the committee's
4 deliberations which hasn't been made and that pertains
5 to the prohibition contained here on the employment
6 by political subdivisions, including counties and munici-
7 palities, of subversive individuals, and I would call to
8 mind that our whole approach has been to allow the
9 political subdivisions autonomy in making their own
10 selections of people to represent them, and any restrict-
11 ions on the employment of them that would be initiated
12 within the political subdivisions, as we propose the new
13 Constitution, that this is an area with which the State
14 Constitution in no respect should tamper by way of their
15 personnel or representatives.

16 THE CHAIRMAN: Mr. Miller.

17 MR. MILLER: Mr. Chairman, this is, of course,
18 an emotional type thing and, as I said, when leaving the
19 other day, I am against Communism, but it seems to me if
20 we are trying to keep our Constitution as small and as
21 firm as we can make it, that any additional language

1 just gives the Court something more to mull over.

2 In my view, my understanding of subversive,
3 the kind of subversive I am disturbed about, wouldn't
4 care about what we put in as a matter of oath, if they
5 could accomplish their means. The oath doesn't mean
6 anything to a real subversive and it seems to me that the
7 shorter we make this Constitution, without going on
8 record as favoring leniency for those who want to over-
9 throw our Government by force, the less we say about it,
10 the better.

11 THE CHAIRMAN: Any further discussion?

12 I wanted to comment only on one thing and that
13 is the use of the word, advocates. I was involved in a
14 case a few years ago where the question at issue was
15 whether or not an employer, a large employer, had acted
16 properly in discharging persons who were members of the
17 Communist Party. This issue came up and it was pointed
18 out in the course of the litigation through the Federal
19 Courts that the only practical way, in many instances,
20 to determine one's advocacy of overthrow of the Government
21 by force and violence was by membership in an organiza-

1 tion. That, with the exception of a relatively few
2 persons, members of such parties, they did not go around
3 advocating this openly in a manner that you could prove.
4 That poses one problem.

5 I must confess that I am somewhat disturbed
6 about the inclusion of the language from the model Con-
7 stitution in our form of oath, although I note that the
8 model Constitution is apparently intended to be much
9 broader because it says: No oath, declaration or political
10 test shall be required for any public office or employment.
11 So that it would cover anyone else.

12 Ours, I take it, is limited entirely to persons
13 who are elected or appointed to offices of profit.

14 Are you ready for the question? Judge Adkins,
15 do you want to close?

16 JUDGE ADKINS: No, I will rest. I am prepared
17 to vote.

18 THE CHAIRMAN: The question arises on the motion
19 to include in the Constitution the provision similar
20 to present Section 11 of Article XV, except that the
21 first three lines shall read: No person who advocates

1 the overthrow of the Government of the United States
2 or the State of Maryland, through force and violence
3 and so forth. A vote Aye is a vote for including such
4 a provision in the Constitution and a vote Nay is not
5 to do so.

6 All those in favor please signify by a show of
7 hands.

8 MR. BROOKS: Seven.

9 THE CHAIRMAN: Contrary.

10 MR. BROOKS: Fifteen.

11 THE CHAIRMAN: The motion is lost seven to
12 fifteen.

13 Now, in the absence of another motion, the
14 recommendation of the committee would stand, namely that
15 the section be deleted.

16 Is there any further motion with respect to this
17 section? Is there any motion with respect to possible
18 amendment of Section 6 of Article I? Mr. Miller.

19 MR. MILLER: If it would be in order, I would
20 move a reconsideration of the provision which we have
21 already adopted from the model Constitution and move with

1 the idea that we might expunge that business about
2 declaration, or affirmation being unconstitutional.

3 THE CHAIRMAN: Is there a second?

4 MR. GENTRY: Seconded.

5 THE CHAIRMAN: The motion goes before you with-
6 out debate.

7 The motion is to reconsider the vote by which
8 the Commission heretofore approved Section 6, of Article
9 I, as contained in the second report of the Committee on
10 Miscellaneous Provisions. Those in favor of such re-
11 consideration signify by saying Aye. Contrary, No. The
12 ayes seem to have it, the ayes have it. The section
13 is before you for a reconsideration. Mr. Sykes.

14 MR. SYKES: Mr. Chairman, I would move that we
15 eliminate the word declaration and I would like to focus
16 on declaration before we take up the other problem be-
17 cause it is a separate problem.

18 THE CHAIRMAN: The other problem being?

19 MR. SYKES: The other problem being political
20 test.

21 THE CHAIRMAN: All right.

1 MR. SYKES: The reason for the motion is that
2 the word declaration can create a lot of mischief in
3 connection with existing election practices.

4 The Legislature presently requires a certifi-
5 cate of eligibility on the part of prospective candidates
6 for office, and they have to certify to their residence,
7 and their compliance with the other requirements, their
8 age and so on.

9 Now, if you say that no declaration other than
10 the oath of office is involved, you may under-cut the
11 constitutional justification which the Court of Appeals
12 has now -- now uses for the procedure for certificates
13 of eligibility. I think that there is no intention to go
14 that far, and that it, the provision can only cause
15 trouble, and the word declaration clearly goes further
16 than any ought to go.

17 THE CHAIRMAN: Is there a second to the motion?

18 MR. SCANLAN: I second that motion.

19 THE CHAIRMAN: Any further discussion?

20 MR. MARTINEAU: A question.

21 THE CHAIRMAN: Mr. Martineau.

1 MR. MARTINEAU: Wouldn't that same apply, Mr.
2 Sykes, to the question as to expenditures and things
3 like that, as far as filing statements by campaign
4 treasurers, and the eligibility for a man to hold public
5 office, if these are not filed?

6 MR. SYKES: There is a little bit of difference,
7 as I see it, between a man who doesn't comply with the
8 Corrupt Practices Act after the election and a man who
9 can't get on the ballot unless he certifies to the re-
10 quirements of the law with regard to his eligibility.
11 I think it is much more like a declaration, that is the
12 problem is much more severe and much different in kind,
13 it seems to me, in the first instance, than it is in the
14 second.

15 THE CHAIRMAN: Mrs. Bothe.

16 MRS. BOTHE: I would just like to point out
17 that the model which proposes the language which this
18 Commission previously adopted, that is that the inclusion
19 of the word declaration along with oath and political
20 test, points out that forty-three States use that lan-
21 guage. Maryland seems to have previously been unique

1 in restricting its language to oaths.

2 Now, I assume that of those forty-three States
3 a great number of them require candidates for office
4 to file declarations or some other evidence that they
5 are fit persons to hold the office, and I would be some-
6 what reluctant to alter the language on the strength of
7 Mr. Sykes' arguments, and I can appreciate the difficulty
8 because certainly I wouldn't subscribe to the inability
9 of the State to obtain declarations of residency, et
10 cetera, from candidates for office, but I would question,
11 in view of the predominance of these words in almost
12 all of the States of the Nation, that the result would
13 be as he states.

14 If the Commission isn't determined upon making
15 a decision here, I suppose the committee could go into
16 it further because, frankly, we just came upon this
17 problem today and we don't actually know the effect of
18 the inclusion or deletion of the word declaration.

19 THE CHAIRMAN: Any further discussion? Are
20 you ready for the question?

21 The question arises on the motion to amend

1 Section 6 of Article I by deleting from the last sentence
2 the word, declaration. A vote Aye is a vote in favor
3 of the deletion. A vote No leaves the sentence as it
4 stands.

5 All those in favor please signify by a show of
6 hands.

7 MR. BROOKS: Twenty.

8 THE CHAIRMAN: Contrary.

9 MR. BROOKS: Two.

10 THE CHAIRMAN: The motion is carried twenty to
11 two.

12 Any further discussion with respect to Section
13 6 of Article I?

14 The last sentence as now corrected would read:
15 No oath or political test shall be required, and I take
16 it, read in the context of the whole section, this is
17 limited to an office of profit or trust, appointive or
18 elective.

19 Any further discussion? Professor Burdette.

20 DR. BURDETTE: I presently understand a political
21 test to mean an inquiry about one's views within a

1 constitutional framework. I think it may go, however,
2 to such a point as Mr. Scanlan raised, but I would like
3 to call the attention of the Commission -- at least my
4 mind runs to the thought that these words may have a
5 broader and broader interpretation under Court action
6 in the years ahead. While I certainly subscribe to the
7 view that we should not have a test which would exclude
8 a Quaker, or a person of the Jewish faith, or matters of
9 this sort, I am not sure that I want to exclude all tests,
10 if a Court should decide that inquiring whether or not
11 that a person believing in the Constitution is a test.
12 I would like to raise that for discussion among the law-
13 yers.

14 THE CHAIRMAN: Any discussion? Mr. Scanlan.

15 MR. SCANLAN: I would like the legislative
16 history of this Commission to show, at least as far as
17 my vote is concerned, that I don't regard the prohibition
18 against political tests to interfere with a political
19 test for a primary candidate in a primary.

20 I have had a recent bitter experience about
21 this, and, Professor Burdette, you would be surprised

1 how much confusion exists, and there is a distinct
2 possibility the Courts will expand the political doctrine
3 of tests. There is no question about it.

4 I want the record to show I am for this pro-
5 vision. I hope some Court in the future doesn't construe
6 it to forbid a requirement that a candidate in the Demo-
7 cratic Party, for example, could not be required to take
8 an oath as a condition of participating in the primary
9 as a candidate, that he supports the principles of the
10 Democratic Party and will support its candidates in
11 the general election.

12 THE CHAIRMAN: Mr. Martineau.

13 MR. MARTINEAU: I would hope that would not
14 go on the record as being the sentiments of this Com-
15 mission unless they were -- it is adopted as such.

16 MR. SCANLAN: They were my sentiments, Robert.

17 THE CHAIRMAN: Any further discussion or com-
18 ment?

19 MR. MILES: Express me as concurring with Mr.
20 Scanlan's sentiments.

21 MR. BOND: Me, also.

1 THE CHAIRMAN: Mr. Bond, I can't hear you.

2 MR. BOND: I also concur.

3 DR. TEMPLETON: May I ask what are Mr. Scan-
4 lan's sentiments? He says he is in favor of the retention
5 of the provision --

6 MR. SCANLAN: I am concerned that Courts in the
7 future might seize upon the phrase, political test, to
8 outlaw traditional practices of requiring declarations
9 of party loyalty. Now, we don't have much of that in
10 Maryland, but we have had some. There might come a day
11 when we want to protect party integrity a bit more than
12 we have recently. I would hate to see legitimate efforts
13 in that regard barred by a Court carrying the interpreta-
14 tion of political test to the Nth degree.

15 THE CHAIRMAN: I take it that would also be
16 pertinent with respect to a statute which we already have
17 in Maryland which is only Democrats can run in a Demo-
18 cratic primary, and only Republicans in a Republican pri-
19 mary, and one who is an unsuccessful candidate in either
20 cannot be an independent candidate.

21 MR. SCANLAN: Precisely.

1 THE CHAIRMAN: You are making the statement
2 you personally do not believe the provisions of the
3 last sentence, that no political test shall be required,
4 would prevent any such legislation?

5 MR. SCANLAN: I should hope not.

6 MR. JENKINS: I don't know the import of this
7 discussion except for history. I would like to say I
8 do not agree with Mr. Scanlan's view and I hope it will
9 not be a view of this Commission that if you are going
10 to run for office that you must then pledge to support
11 every fellow candidate of your political party.

12 MR. MILLER: Off the record.

13 (Discussion off the record followed.)

14 THE CHAIRMAN: Any further comment. Any fur-
15 ther discussion of the second report of the Committee on
16 Miscellaneous Provisions? Mrs. Bothe, anything further.

17 MRS. BOTHE: No, nothing further.

18 THE CHAIRMAN: That concludes the stated busi-
19 ness of the afternoon.

20 The next business is the photograph.


21 (Thereupon the Commission adjourned at 3:55 p.m.)

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